

15670 ALSO IN
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No. 15670 ✓

United States
Court of Appeals
for the Ninth Circuit

NORTHWEST ORIENT AIRLINES, INC.,
Appellant,
vs.

GERALDINE B. GORTER, as Administratrix of
the Estate of John M. Waldrep, Deceased,
Appellee.

Transcript of Record

In Three Volumes

VOLUME I.

(Pages 1 to 378, inclusive).

Appeal from the United States District Court for the
Western District of Washington,
Northern Division

FILED

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PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

CARL G. KOCH,
KARR, TUTTLE & CAMPBELL,

1210 1411 Fourth Ave. Bldg.,
Seattle 1, Washington,

Attorneys for Appellant.

GAIL M. WILLIAMS,
WILLIAMS & KINNEAR,
JOHN W. RILEY,

3314 White Building,
Seattle 1, Washington,

Attorneys for Appellee.

In the District Court of the United States, Eastern
District of Washington, Southern Division

No. 883

GERALDINE B. GORTER, Administratrix of the
estate of John M. Waldrep, Deceased,
Plaintiff,

vs.

NORTHWEST AIRLINES, INC., a Minnesota
Corporation, Defendant.

COMPLAINT

Plaintiff complains of defendant, alleging:

First Count

I.

Plaintiff is the duly appointed, qualified, and acting special administratrix of the estate of John M. Waldrep, deceased, and holds special letters of administration issued by the Superior Court of the State of Washington for Walla Walla County, which authorize the commencement and prosecution of this action. Federal jurisdiction is based upon the fact that plaintiff is a citizen of the State of Washington and defendant is a corporation organized and existing under the laws of the State of Minnesota, authorized to do business and doing business in the State of Washington. This is a civil suit involving over \$3,000 exclusive of costs and interest.

II.

On January 19, 1952, John M. Waldrep, a member of the United States armed forces, was a passenger on Northwest Airlines Flight 324, aircraft N-45342, enroute from Japan to McChord Air Force Base, Tacoma, Washington, via Shemya and Anchorage, Alaska.

III.

This flight was undertaken by the defendant, Northwest Airlines, Inc. (hereafter referred to as "Northwest") pursuant to a contract entered into between Northwest and the United States Department of the Air Force on June 30, 1950, for the transportation of Government personnel and equipment.

IV.

Early in the morning of January 19, 1952, while Flight 324 was proceeding from Anchorage, Alaska, to McChord Air Force Base, and was opposite Sitka, Alaska, trouble developed in the No. 1 engine. Owing to a defect in that particular engine, it became necessary to feather the No. 1 propeller and seek a nearby airstrip for the purpose of a precautionary landing. In accordance with company operating procedures in effect at that time, the aircraft captain sought and received clearance from the Air Traffic Route Control (a component part of the United States Civil Aeronautics Administration) to land at the first available airport, which in this instance was Sandspit, British Columbia, rather than continue on the three remaining engines. Sandspit airstrip is designated

by the Civil Aeronautics Board as an emergency airport for Northwest's operations.

V.

At no time, either before or during Flight 324, were the passengers instructed on the use of the life jackets, rubber rafts, or other equipment carried by the aircraft for use in water landings. After trouble developed in No. 1 engine, no effort was made to prepare for a crash landing, or an unpremeditated ditching. As a result, the life jackets, rubber rafts, and other equipment intended for use in such emergencies were not available to the passengers when the aircraft later crashed in the waters of Hecate Strait, as hereafter alleged in paragraph VI.

VI.

In attempting to land at the Sandspit airstrip, the plane crashed less than a mile offshore in the waters of Hecate Strait, British Columbia. The decedent herein perished, as the plaintiff believes and alleges, as a result of drowning in the near-freezing waters, before a rescue could be effected. Plaintiff believes and alleges that, but for the negligence of the defendant as above alleged in paragraph V, the decedent would have survived.

VII.

The No. 1 engine of aircraft N-45342 had, at the time of the accident, been operated in excess of the overhaul time period of 1500 hours prescribed by regulations of the Civil Aeronautics Board. This

engine was leased by Northwest from Trans World Airlines, Inc., which shipped it to Northwest's Seattle, Washington, base on October 21, 1951. The Northwest base at Seattle was advised at that time by TWA as to the number of hours which had elapsed since the engine had been overhauled, but as the result of the negligence of Northwest's Seattle personnel, this critical information was never recorded or evaluated. Consequently, when the engine was eventually installed in the aircraft N-45342, it had accumulated more than 225 hours in excess of the 1500 hours allowed between overhauls.

VIII.

As the result of defendant's negligence in the State of Washington and elsewhere in allowing an engine to be installed in aircraft N-45342, which engine had exceeded the required overhaul time period, Flight 324, on which the decedent was a passenger, crashed at Sandspit, British Columbia, airstrip on January 19, 1952, causing the death of decedent.

IX.

Plaintiff brings this action on behalf of the decedent's surviving daughter, Judith Ann Waldrep, age two (there being no surviving spouse), pursuant to paragraph 4.20.010 of the Revised Code of the State of Washington and claims of the defendant damages in the amount of \$100,000.00 for said wrongful death.

Second Count

X.

The allegation of jurisdiction of paragraph I is adopted herewith.

XI.

The whole of paragraphs I, II, III, IV, V, VI, and VII of the First Count are adopted as fully as if specifically repeated herein.

XII.

Sandspit, British Columbia, constituted an agreed stopping place within the meaning of Article 1(2) of the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000 (hereafter called the "Warsaw Convention"). Accordingly, the flight on which decedent died was in "international transportation" within the purview of Article 1(2) of the Warsaw Convention and therefore subject to the provisions of that Convention.

XIII.

Defendant accepted the decedent on this flight as a passenger without a passenger ticket having been delivered within the meaning of Article 3(2) of the Warsaw Convention.

XIV.

The negligence of the defendant in operating No. 1 engine in excess of the overhaul time period of 1500 hours prescribed by regulations of the Civil Aeronautics Board caused the death of decedent and constituted willful misconduct, or such default

as, in accordance with the law of this Court, is considered to be equivalent to willful misconduct.

XV.

This Court is the court at the place of destination of the flight within the meaning of Article 28(1) of the Warsaw Convention.

XVI.

Plaintiff brings this action pursuant to Article 17 of the Warsaw Convention, and claims of the defendant damages in the amount of \$50,000 for said wrongful death.

Third Count

XVII.

The allegation of jurisdiction of paragraph I is adopted herewith.

XVIII.

The whole of paragraphs I, II, III, IV, V, VI, and VII of the First Count are adopted as fully as if specifically repeated herein.

XIX.

The defendant's obligation under the contract with the United States Government to transport certain personnel, including the decedent herein, included the obligation to decedent to provide him safe passage from Tokyo, Japan, to McChord Air Force Base, Seattle, Washington.

XX.

The defendant's obligation under said contract

also included the obligation to decedent to furnish, maintain, and operate aircraft in accordance with appropriate and applicable Civil Aeronautics Regulations.

XXI.

The defendant breached its obligations to the decedent under the said contract, thereby causing his death.

Wherefore, plaintiff demands judgment against defendant as follows:

First Count

1. Damages in the amount of \$100,000.00 and costs; or in the alternative,

Second Count

1. Damages in the amount of \$50,000 and costs; or in the alternative,

Third Count

1. Damages in the amount of \$50,000 and costs.

/s/ CHARLES F. LUCE,
FOWLER, LEVA, HAWES &
SYMINGTON,
HOYT M. ELLIOTT,

Attorneys for Plaintiff

[Endorsed]: Filed Jan. 18, 1954. Stanley D. Taylor, Clerk. Filed Apr. 22, 1954. Millard P. Thomas, Clerk.

[Title of District Court and Cause.]

MOTION TO DISMISS COMPLAINT FOR
FAILURE TO STATE A CLAIM

Defendant moves the court as follows:

For an Order dismissing this action because the complaint fails to state a claim against defendant upon which relief can be granted.

First Count: Does not state a claim upon which relief can be granted because it admits that the accident occurred in British Columbia, and that the decedent, John M. Waldrep, drowned there. The general rule is well established that the place of the wrong is the state or country where the last event necessary to make an actor liable for an alleged tort takes place. The underlying reason for habitually designating the place of the harmful effect is that under the common law a tort consists of a series of events, the cumulative effect of which is to create liability. Conduct and a force set in motion thereby do not of themselves do this, since ordinarily there is no liability until the force has injurious effect.

Authorities to this effect are: Restatement, Conflicts of Law, Sec. 377; *Cameron vs. Vandergriff*, (Ark.) 13 S.W. 1092 (1890). *Alabama & G.S.R. Co. vs. Carroll*, (Ala.), 11 So. 803, 18 L.R.A. 433 (1892). *Otey vs. Midland Valley R. R. Co.*, (Kan.), 197 Pac. 203 (1921). *Le Forest vs. Tolman*, (Mass.), 19 Am. Rep. 400 (1875). *Loucks vs. Stan-*

dard Oil Co., (N. Y.), 120 N.E. 198 (1918). Stumberg, *Conflicts of Law*, 1937 Ed.

It necessarily follows that plaintiff's rights are prescribed by the controlling laws and statutes of British Columbia, Canada. Tort actions do not survive at common law, and recovery cannot be predicated upon the Washington Wrongful Death Statute, Paragraph 4.20.010, Revised Code of Washington, relied upon by plaintiff, such statute being in derogation of the common law.

Count Two: Does not state a claim upon which relief can be granted because the Warsaw Convention has never been ratified by and is not in force as to Japan. Chapter 1, Article 1, Paragraph (2) of the Warsaw Convention defines transportation as:

“* * * (A)ny transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. Transportation without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party shall not be

deemed to be international for the purposes of this Convention.”

Since Japan has not ratified the treaty, it is not a “High Contracting Party”. The place of departure and the place of destination were not within the territories of two “High Contracting Parties”. The transportation departed from the territory of a non-contracting party. The place of destination was a point within the territory of a “High Contracting Party”, the United States. The only agreed stopping places were at Shemya, in the Aleutian Islands, and Anchorage, both within United States Territory. This is acknowledged by Paragraph II of the complaint. Paragraph IV of the complaint acknowledges that defendant received clearance from the Air Traffic Route Control, a component of the U. S. Civil Aeronautics Administration, to make an emergency landing at Sandspit, British Columbia. This was not an agreed stopping place, but rather was a stop made necessary by circumstances that developed long after the flight was planned and undertaken. The flight as planned and undertaken did not include provision for the emergency landing which was attempted. It should be observed further that the flight did not land at Sandspit. The pilot, after attempting a landing, changed his mind and continued the flight. The plane did not gain sufficient altitude and plunged into the water of Hecate Strait, some distance from the Sandspit airfield. It follows, then, that this flight was not one subject to the provisions of the Warsaw Convention.

Unification of Certain Rules Relating to International Transportation by Air (Warsaw Convention) 49 Stat. 3000.

Count Three: Does not state a claim upon which relief can be granted because of failure to join an indispensable party, and because a tort action is set up and such action does not survive at common law.

(1) Failure to Join an Indispensable Party. The complaint alleges that plaintiff is a Special Administratrix of the estate of the decedent and authorized by the Walla Walla County Superior Court to prosecute this action; that the spouse of John M. Waldrep is now deceased, and that Judith Ann Waldrep, aged two years, is the surviving daughter of the aforescribed deceased parents. No foreign law is pleaded, so it may be presumed that the law of a domicile of the deceased parents and the surviving child is the same as the law of the forum. It appears from the face of the complaint that John M. Waldrep was survived by his wife, because it is alleged that the daughter is now two years old and the accident in which John M. Waldrep drowned occurred more than two years ago. If the action is based on contract, it would survive under the provisions of RCW 4.20.040 and would not be a wrongful death action, the right to which is created by RCW 4.20.010. The marital community, composed of John M. Waldrep and his wife, terminated on Waldrep's death. When Mrs. Waldrep died her personal representative and this plaintiff, the personal representative of

John M. Waldrep, owned this right of action, based on contract, as tenants in common, and their minor daughter had an interest therein which must be represented by a duly appointed, qualified, and acting guardian ad litem. One tenant in common cannot bring an action to recover property so held, without either joining the other tenant in common as a plaintiff or a defendant. An action on contract cannot be maintained by one tenant in common, as is attempted here, without making the other tenant in common, and others having an interest in the subject matter, including the guardian ad litem of Judith Ann Waldrep, either parties plaintiff or defendant.

(2) A Tort is Set Up and a Tort Action Does Not Survive the Common Law. In reality, although this count is couched in contract language, it is obvious that liability, if any, will be predicated on proof of negligence. In fact, it is alleged in Paragraph XIX, Page 5, of the complaint, that defendant had the obligation to provide decedent with safe passage, and in Paragraph X, Page 5, that defendant's obligation included the obligation to furnish, maintain and operate aircraft in accordance with applicable Civil Aeronautics Regulations. Where the basis of a cause of action is an alleged breach of a duty through negligence, the action is governed by the applicable law of torts, even though the allegations refer to a breach of contract. Under the applicable law of torts, the law of British Columbia applies, the tort action does not survive, and the wrongful death action created by

the statute in derogation of the common law by the legislature of the State of Washington is inapplicable.

The preceding arguments made with reference to Count One become relevant here.

Maynard vs. Eastern Airlines, Inc., (C.C.A. 2) 178 F. 139, and cases there cited.

Restatement, Conflicts of Laws, Section 391.

/s/ CARL G. KOCH,
KARR, TUTTLE & CAMPBELL,
Attorneys for Defendant.

[Endorsed]: Filed Feb. 9, 1954. Stanley D. Taylor, Clerk. Filed Apr. 22, 1954. Millard P. Thomas, Clerk.

[Title of District Court and Cause.]

ORDER CHANGING VENUE

This matter having come on regularly to be heard this 6th day of April, 1954, before the undersigned Judge of the above entitled court, plaintiff being represented by Charles F. Luce of Tuttle and Luce, Walla Walla, Washington, her attorneys, and the defendant being represented by Carl G. Koch of Karr, Tuttle & Campbell of Seattle, Washington, its attorneys, and the court having heard the arguments of counsel, and having examined the records and files herein, and being fully advised in the premises, now therefore, it is hereby

Ordered that defendant be and is hereby permitted to withdraw its motion heretofore made for change of venue to the United States District Court for the Western District of Washington, Northern Division, and it is further

Ordered that plaintiff's oral motion made in open court for change of venue to the United States District Court for the Western District of Washington, Northern Division on the ground that it would be for the convenience of parties and witnesses be *and* in the interests of justice, and the same is hereby granted, and it is further

Ordered that such change of venue shall be without prejudice to the right of the defendant to present for determination to the United States District Court for the Western District of Washington, Northern Division its motions heretofore filed entitled Motion to Dismiss Complaint for Failure to State a Claim; Motion to Dismiss Count Two of Complaint for Lack of Jurisdiction over the Subject Matter; Motion to Dismiss for Lack of Jurisdiction over the Defendant; Motion to Quash for Insufficiency of Service of Process, and it is further

Ordered that defendant's motion to dismiss count two of the complaint on the ground that the United States District Court for the Eastern District of Washington, Southern Division does not have jurisdiction over the subject matter is preserved, is not waived, and may be presented for determination to the United States District Court for the Western District of Washington,

Northern Division, notwithstanding the fact that venue has been changed by this order to the United States District Court in which defendant alleges that plaintiff's action should have been commenced.

Done in Open Court this 20th day of April, 1954.

/s/ SAM M. DRIVER,

United States District Judge for the Eastern District of Washington, Southern Division.

Presented by:

CARL G. KOCH, of Karr, Tuttle & Campbell,
Attorneys for Defendant.

Certification attached.

[Endorsed]: Filed April 20, 1954, Stanley D. Taylor, Clerk. Filed April 22, 1954, Millard P. Thomas, Clerk.

In the District Court of the United States, Western District of Washington, Northern Division

Civil Action No. 3695

GERALDINE B. GORTER, Administratrix of the
estate of John M. Waldrep, Deceased,
Plaintiff,

vs.

NORTHWEST AIRLINES, INC., a Minnesota
Corporation, Defendant.

MEMORANDUM OF AUTHORITIES IN OP-
POSITION TO DEFENDANT'S MOTION
TO DISMISS

It is plaintiff's position that the Complaint

herein does state a claim upon which relief can be granted for the reasons as hereinafter set out.

Count One

Paragraphs VII and VIII of plaintiff's First Count alleges negligent acts of the defendant which occurred in the State of Washington. Defendant's Motion gives rise to the following question.

Where an American serviceman under military orders is flying as a passenger in an American airliner under contract with the United States, and he is killed as a result of the airline's negligence committed in the United States, but by fortuitous events the crash occurs in a foreign country, is the serviceman's right of recovery against the airline to be measured by the law of the foreign country where the crash happened to occur.

The Wrongful Death Statute of the State of Washington, RCW 4.20.010 provides:

"When the death of a person is caused by the wrongful act, neglect, or default of another, his personal representative may maintain an action for damages against the person causing the death; * * *"

This statute creates a cause of action unknown to the common law and the rules of common law relative to the locus of a tort need not necessarily be applied in construing this statute.

Mike vs. Lian, 322 Pa. 353, 185 A 775 (1936).

Hoodmacher vs. Lehigh Valley R. Co. 66A. 975 (Penn. 1907).

It should be pointed out that in Mike vs. Lian,

supra, the court at page 777, in pointing out the distinction between a suit at common law for personal injury and a suit under a wrongful death statute said:

“As these cases concern themselves with a statutory cause of action for death, they are susceptible to the application of a different principle from that governing the ordinary common law trespass, although it is not meant to be asserted here that a different principle should apply. In the statutory death action, there is a possibility of fixing the place of the wrong by any one of three incidents, namely, the place of negligence, place of injury, or the place of death.”

In construing the wrongful death statute above it is evident that the legislature did not require that the death occur in the State of Washington. The statute provides for a cause of action when a wrongful act, neglect or default causes the death of another. The statute is phrased in terms of acts or lack thereof and by its terms it does not require that the wrongful acts result in an impact in the State of Washington. In the instant case acts of negligence on defendant's part did occur in the State of Washington resulting in the death of the decedent in Canada. We are not aware of a decision in the Courts of this State holding that under these circumstances a cause of action cannot be maintained under the Washington Wrongful Death statute.

Since this is then a case of first impression it is therefore in order for the Court to examine

relevant policy consideration, since conflicts of law are ultimately based upon such considerations. The policy considerations favoring the application of domestic law are:

1. Since no foreign parties or interests are involved, there is no need to apply the principle of comity in order to do justice between the parties.

2. A serviceman is not abroad of his own free will, but because of military orders issued by the United States Government.

3. Convenience and certainty: Our servicemen are being transported under military orders by domestic carriers all over the world; to apply the law of remote foreign nations to such cases would be difficult, confusing and uncertain.

4. Wrongful death actions are statutory, and the rules of the common law need not necessarily be applied.

Defendant apparently takes the position that the place of death is controlling as to the law to be applied and that the laws of the place where the negligent acts occurred is not to be considered. However, there are cases holding that the applicable law is the law of the locus of the cause of the injury rather than the law of the locus of the injury itself.

For instance see, *Lindstrom vs. International Nav. Co.* 117 Fed. 170 (C.C. E.D. New York 1902) Reversed on other grounds 123 F 475 (CCA 2nd D), Writ of Certiorari denied in 193 U.S. 669, where the Court held in a wrongful death suit that the tortious act occurred on board ship and there-

fore the law of New York applied. In this case the tortious acts were committed on board ship resulting in the death of the decedent by drowning after she was swept overboard by a wave. The Court refused to follow defendant's contention that since the death occurred by drowning the tortious act was committed on the ocean and the law of New York did not apply.

Likewise the Supreme Court of the State of Washington has had occasion to rule upon a similar point. In *Scott vs. Department of Labor and Industries*, 130 Wash. 598, 28 Pac. 1013 (1924) a workman was standing on a hopper and platform, which was a part of the dock, and when the hopper and platform were tipped over it caused the workman to fall, and he was injured when he struck the deck of a vessel below. The appellant argued that the injury was a matter of admiralty jurisdiction and did not come under the jurisdiction of the State court and the Washington Workman's Compensation Laws. The basis of the appellant's contention was that jurisdiction was determined by the locus of the injury, i.e., the ship deck, and not the locus of the cause of the injury, i.e., the dock. However, the Washington Court even though conceding that the injury was sustained by striking the deck of the ship, refused to follow appellant's contention and applied the Workman's Compensation Laws of the State of Washington.

However, even if the Court conceives that it should apply the law of British Columbia, Canada, this would not be grounds for dismissal of Count

One. The law of British Columbia, Canada, not being pleaded it is presumed that the law of British Columbia, Canada, is the same as the law of the State of Washington. This presumption goes as well to the statute law of Canada as it does to the common law.

Fletcher vs. Murray Commercial Co., 72 Wash. 525, 130 Pac. 1140 (1913).

Pitt vs. Little, 58 Wash. 355, 108 Pac. 941 (1910).

Daniel vs. Gold Hill Mining Co., 28 Wash. 411 (1902).

The Hanna Nielson, 25 F. (2d) 984 (1902) (D.C. Wash. W.D. 1928).

Count Two

The objections raised by the defendant to Count Two are questions of fact which should be raised by defendant as a matter of defense. The questions that would probably be raised under a proper pleading are, inter alia:

(1) Has Japan ratified the Treaty so as to become a "High Contracting Party" within the meaning of the Warsaw Convention and Chapter I, Article 1, thereof.

(2) If Japan is not a "High Contracting Party", does the occupation of that country by the United States mean that the flight departed from "territories subject to the sovereignty, suzerainty, mandate, or authority of" the United States within the meaning of Chapter I, Article 1 (2) of the

Warsaw Convention on International Air Transportation.

(3) Paragraph XIII of the Second Count alleges that no passenger ticket was delivered to the deceased. Therefore, the only contract controlling the place of departure is the contract alleged in paragraph III of Count One between the United States and the defendant, providing for the services of the latter in furnishing transportation on a mileage basis. This contract does not specify any place of departure. This being the case the question is raised as to whether the place of departure is Alaska or Japan.

(4) If Japan is not a "High Contracting Party" but the flight departed from territories subject to the sovereignty, suzerainty, mandate, or authority of the United States", then was Sandspit, British Columbia, an agreed stopping place within the meaning of Chapter I, Article 1, of the Warsaw Convention on International Air Transportation.

It is apparent that the foregoing questions raise substantial questions of fact which can only be disposed of by evidence introduced pursuant to a proper pleading of the cause.

Count Three

Defendant's argument for dismissal of Count Three is based upon the assumption that the face of the Complaint shows that John M. Waldrep was survived by his wife since the death of John M. Waldrep occurred more than two years ago, but the surviving child is only two years old. How-

ever, defendant's assumption is not warranted by the Complaint. The record indicates that the Complaint was subscribed on or before January 18, 1954, and at that date the surviving child was two years old. The death of John M. Waldrep occurred on January 19, 1952, or less than two years from the date the Complaint was subscribed, so it cannot be assumed that the wife of John M. Waldrep survived him.

Furthermore, even assuming that John M. Waldrep was survived by a widow there is no defect in party plaintiff. Under the law of the State of Washington, upon the death of one spouse the entire community estate is subject to probate.

Crowe & Co. vs. Adkinson Const. Co., 67 Wash. 420, 121 Pac. 841 (1912).

Gillam vs. City of Centralia, 14 Wn. (2d) 523, 128 P. (2d) 661 (1942).

Furthermore, under RCW 11.48.090 it is provided all actions on contract may be brought by the executor in all cases in which the action might have been maintainable by the testator. Count Three is a contract action and as community property it forms a part of the estate of the deceased and as held in *Belt vs. Washington Water Power Company*, 24 Wash. 387, 64 Pac. 525 (1901) it is an action which would have been maintainable by the deceased without joining his wife as party plaintiff. Therefore this is an action maintainable by the administratrix without joinder of the surviving spouse.

Respectfully submitted,

/s/ RAYMOND C. SWANSON,
RYAN, ASKREN & MATHEWSON,
Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed April 22, 1955.

[Title of District Court and Cause.]

ORDER OVERRULING MOTION TO DISMISS AND QUASH

This Matter, having come on to be heard this day before the undersigned Judge of the above-entitled Court, pursuant to the motions of the defendant, and the plaintiff being present by her attorneys, Ryan, Askren & Mathewson, and the defendant not being present but defendant's attorneys, Karr, Tuttle & Campbell, having heretofore approved the entry of this Order as to its form, and the Court having heard oral argument on the 16th day of May, 1955, and written memoranda having been filed herein and the Court being otherwise advised in the premises, Does Hereby:

Order, Adjudge and Decree, that the defendant's Motion to Dismiss Complaint for Failure to State a Claim, Motion to Dismiss Count Two of Complaint for Lack of Jurisdiction Over the Subject Matter, Motion to Dismiss for Lack of Jurisdiction Over the Defendant, and Motion to Quash for Insufficiency of Service of Process, be and

the same hereby are overruled without prejudice to the right to renew at the time of trial and defendants' exceptions hereto are noted and allowed.

Done in open Court this 23rd day of May, 1955.

/s/ JOHN C. BOWEN,
Judge

Presented by:

/s/ RAYMOND C. SWANSON, of Ryan, Askren
& Mathewson, Attorneys for Plaintiff.

Approved as to Form:

/s/ JAMES B. CARROLL, of Karr, Tuttle &
Campbell, Attorneys for Defendant.

[Endorsed]: Filed May 23, 1955.

[Title of District Court and Cause.]

ANSWER

Defendant Northwest Airlines, Inc., above named by its attorneys, Karr, Tuttle & Campbell, for its answer to plaintiff's complaint admits, denies and alleges:

As To First Cause of Action

I.

Defendant denies that plaintiff is the duly appointed, qualified, and acting special or general administratrix of the estate of John M. Waldrep, deceased. Defendant denies that it has any knowledge or information sufficient to form a belief as to any of the remaining allegations contained in Paragraph I of the complaint, except that defend-

ant admits that the Superior Court of the State of Washington for Walla Walla County purported to authorize the commencement and prosecution of this action, that defendant is a corporation organized and existing under the laws of the State of Minnesota and is engaged in interstate commerce in the State of Washington, and that this is a civil suit in which judgment is sought in excess of Three Thousand Dollars (\$3,000.00).

II.

Defendant admits that on January 19, 1952, Northwest Airlines Flight No. 324, Aircraft N-45342, was enroute from Japan to McChord Air Force Base near Tacoma, Washington, via Shemya and Anchorage, Alaska. Defendant denies the remaining allegations of Paragraph II for the reason that it does not have sufficient information to form a belief as to the truth or falsity thereof.

III.

Defendant admits that Flight No. 324 was undertaken by Northwest Airlines, Inc., in accordance with a contract between said defendant and the United States of America for the transportation of government personnel and equipment, and denies the remaining allegations of Paragraph III.

IV.

Defendant denies each and every allegation contained in Paragraph IV of plaintiff's complaint except that it admits that the Sandspit, British

Columbia, airport was designated in defendant's tariffs on file with the Civil Aeronautics Board as an emergency airport.

V.

Defendant denies each and every allegation contained in Paragraph V of the complaint.

VI.

Defendant denies that it has any knowledge or information sufficient to form a belief as to any of the allegations contained in Paragraph VI of the complaint except that it admits that Aircraft No. N-45342 settled in the waters just off the Sandspit, British Columbia, shore January 19, 1952.

VII.

Defendant denies the allegations of Paragraph VII of the complaint except that it admits that Number One Engine on Aircraft No. N-45342 was leased by defendant from Trans World Airlines, Inc., that said engine was received by defendant at Seattle, Washington, October 21, 1951, at which time defendant was advised by TWA of the number of elapsed hours said engine had been in use since its last overhaul.

VIII.

Defendant denies each and every allegation of Paragraph VIII of the complaint.

IX.

Defendant does not have sufficient information

to form a belief as to the truth or falsity of the allegations set forth in the first two lines of Paragraph IX and therefore denies the same. Defendant specifically denies the applicability of the cited statute, and denies that the alleged beneficiary for whose benefit plaintiff is alleged to have instituted this suit has been damaged in the amount of Fifty Thousand Dollars (\$50,000.00) or in any other amount by reason of the facts alleged herein.

As To Second Cause of Action

X.

Defendant repeats, reiterates, and re-alleges each and every of the foregoing allegations, admissions and denials made to the paragraphs of the complaint referred to in paragraphs numbered X and XI thereof, with the same force and effect as though set forth in full herein.

XI.

The allegations of Paragraph XII of the complaint consist of legal arguments and conclusions of law which defendant denies in their entirety. Defendant particularly denies the applicability of the Warsaw Convention to said Flight No. 324.

XII.

Defendant denies each and every allegation contained in Paragraph XIII of the complaint. Defendant alleges that Flight No. 324 on January 18, 1952, from Japan to McChord Air Force Base, Tacoma, Washington, was undertaken and per-

formed in accordance with the terms, conditions, rules and regulations of the afore-mentioned contract with the United States of America, the contract of carriage, defendant's duly filed, posted, published and incorporated tariffs, applicable treaties, and not otherwise.

XIII.

Defendant denies each and every allegation contained in Paragraph XIV of the complaint and specifically denies that it was negligent or that if it was negligent that such negligence constituted willful misconduct within the meaning of the Warsaw Convention.

XIV.

In answer to Paragraph XV of the complaint, defendant denies that the District Court of the United States for the Eastern District of Washington, where this cause of action was instituted, is the court at the place of destination of said Flight 324 referred to in Article 28 (1) of the Warsaw Convention.

XV.

In answer to Paragraph XVI of the complaint, defendant denies the applicability of the Warsaw Convention to the accident which occurred to Aircraft N-45342 on January 19, 1952, and therefore denies that plaintiff has properly invoked Article 17 of said treaty. Defendant further denies that the alleged beneficiary for whose benefit plaintiff is alleged to have brought suit has been damaged in the sum of Fifty Thousand Dollars (\$50,000.00)

or in any other amount by reason of the alleged death of the said John M. Waldrep.

For Further Answer to the Second Cause of Action and by Way of:

First Affirmative Defense

Japan is not a party and has not adhered to the Warsaw Convention. Said treaty is inapplicable to flights where the place of departure is not situated within the territory of a country which is either a party or has adhered to said Convention.

Second Affirmative Defense

Flight No. 324 originated January 18, 1952, from Japan. The flight schedule provided for stops only at Shemya in the Aleutian Islands and Anchorage in Alaska enroute to McChord Air Base, Tacoma, Washington, the point of destination. Both the Aleutian Islands and Alaska are United States territories. There were no agreed stopping places in any territory except territory of the United States, and for that reason said treaty was rendered expressly inapplicable to Flight 324 by Article 1 (2) of the Warsaw Convention.

Third Affirmative Defense

That by reason of the contract hereinbefore mentioned between the United States of America and defendant, Flight 324 was in fact performed by the United States of America and defendant was acting only as an agent of its government. That the United States of America adhered to the

Warsaw Convention in 1934. Said adherence contained the reservation that the Convention should not apply to international transportation performed by the United States.

Fourth Affirmative Defense

Article 28 of the Warsaw Convention provides that actions thereunder shall be brought in the territory of one of the High Contracting Parties before the court of the domicile of the carrier or of its principal place of business, or where plaintiff has a place of business through which the contract has been made, or before the court at the place of destination. The domicile of the carrier is Minnesota. Plaintiff does not have a place of business through which the contract was made. The place of destination of Flight 324 was McChord Field, Tacoma, Washington. The court at the place of destination is either the United States District Court for the Western District of Washington, Southern Division, or the Pierce County Superior Court. An order changing venue of this case from the Eastern District of Washington, Southern Division, to the Western District of Washington, Northern Division, was entered in April, 1954. The order expressly provided that defendant's motion to dismiss the second cause of action on the ground that the United States District Court for the Eastern District of Washington, Southern Division, lacked jurisdiction over the subject matter thereof was preserved and not waived, and that such motion could be presented for determination to the

United States District Court of the Western
Division of Washington, Northern Division.

As To Third Cause of Action

XVI.

Defendant repeats, reiterates, and re-alleges each and every of the foregoing allegations, admissions and denials made to the paragraphs of the complaint referred to in paragraphs numbered XVII and XVIII thereof with the same force and effect as though set forth in full herein.

XVII.

In answer to Paragraphs XIX and XX of the complaint, defendant admits that under the contract between it and the United States of America referred to hereinabove, members of the armed forces were to be transported from Japan to McChord Air Force Base, Tacoma, Washington, and were to be transported in accordance with the provisions of the contract of carriage, defendant's duly filed, posted, published and incorporated tariffs, applicable treaties, and not otherwise. Defendant further admits that its tariffs were duly filed with the Civil Aeronautics Board. To the extent that the allegations of Paragraph XIX and XX are inconsistent with, at variance with, or more inclusive than the admissions herein set forth, they are denied.

John M. Waldrep was not a party to the contract between the United States of America and defendant, and said contract was not made for his

benefit, or for the benefit of persons or cargo to be transported thereunder. The rights of such persons to be transported were not increased or diminished or in any way affected by said contract except that the risks and exposures which would ordinarily devolve upon the defendant as an air-carrier were now assumed by and/or became the responsibility of the United States of America.

XVIII.

Defendant denies the allegations of Paragraph XXI of the complaint.

For Further Answer to the Complaint and by
Way of:

Fifth Affirmative Defense

Even if the transportation referred to in the complaint and the rights of the parties herein are governed by and subject to the provisions of the Warsaw Convention, the defendant duly complied in all respects with the conditions and requirements thereof. Defendant and its agents took all necessary measures to avoid the damages claimed by plaintiff, except for such measures as were impossible for it to exercise, and defendant claims exemption from and limitation of liability in accordance with all of the applicable provisions of said Convention (49 Stat. pt. 2, at p. 3018-3020).

Sixth Affirmative Defense

At all times mentioned in the complaint herein, the aircraft operated by defendant was not in the

exclusive management or control of this defendant, its agents, or employees, but was subject to and under the control of others and if the matters complained of in the complaint herein were due to the fault or neglect of any person or party, then then were due to the fault or neglect of persons or parties for whose acts, fault and neglect the defendant is not responsible.

Seventh Affirmative Defense

That travel on Aircraft No. N-45342 was undertaken subject to, in connection with and with acceptance of the risks and perils of the air through which said aircraft traveled and acts of God over all of which the defendant had no control. That all said risks and dangers were obvious and well known to the passengers who knew or should have known of all said risks and perils, and who, in accepting, undertaking and travelling in said aircraft, assumed, accepted and undertook all of said risks and dangers, the happening of which caused said aircraft to settle in the waters off Sandspit, British Columbia.

Eighth Affirmative Defense

That if the alleged death of John M. Waldrep was caused or contributed to by negligence, fault and want of care, then it was caused by such conduct on the part of persons and parties for whose acts defendant is not liable or responsible, and was not caused or contributed to by the negligence, fault or want of care on the part of this defendant or its agents, officers, servants, or employees.

Ninth Affirmative Defense

That the flight and transportation referred to in the complaint was made by and for and on behalf of the United States of America. That at all times referred to in the complaint, and in connection therewith, the defendant acted only as an agent for the United States of America. There cannot, therefore, be any liability on the part of the defendant for the matters complained of in the complaint herein.

Tenth Affirmative Defense

That plaintiff or the alleged beneficiary for whose benefit this suit is brought has received or is entitled to receive compensation from the United States of America for the alleged death of John M. Waldrep, and as a result thereof plaintiff cannot recover from defendant.

Eleventh Affirmative Defense

That at all times referred to in the complaint herein, the persons of whose acts plaintiff complains were servants and employees of the United States of America, and defendant is not liable for their acts or omissions which may have caused or contributed to the matters complained of in the complaint herein.

Wherefore, defendant prays for judgment dismissing the complaint herein with prejudice and with costs to defendant.

/s/ CARL G. KOCH,

KARR, TUTTLE & CAMPBELL,

Attorneys for Defendant.

Acknowledgment of Service attached.

[Endorsed]: Filed December 30, 1955.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS

Comes now the plaintiff and requests that defendant admit or deny within ten (10) days of service hereof the truth of the following allegations pursuant to Rule 36 of the Federal Rules of Pleading, Practice and Procedure.

1. That Northwest Orient Airlines, Inc., flight No. 324 of January 18, 19, 1952, originated in the Empire of Japan and was officially chartered and destined for the United States of America.

2. That the terminals of the said flight were Tokyo, Japan and Tacoma, Washington, U.S.A.

3. That Shemya Island and Anchorage, Alaska, were agreed stopping places.

4. That Sandspit, British Columbia, was designated by Northwest Orient Airlines, Inc., as an emergency airport for aircraft owned by defendant and was designated by officials authorized to do so of the defendant Northwest Orient Airlines, Inc.

5. That the above named decedent, J. M. Waldrep, was a passenger aboard Flight No. 324, of defendant Northwest Orient Airlines, Inc., on January 19, 1952, which was a Douglas DC-4 Aircraft,

N-45342, when the said aircraft crashed at Sandspit, British Columbia on January 19, 1952.

6. That defendant Northwest Orient Airlines, Inc., received payment for fare for passage of the said decedent J. M. Waldrep on defendant's said Flight No. 324 from Tokyo, Japan to Tacoma, Washington.

7. That the said decedent J. M. Waldrep died in the wreckage of the defendant's said aircraft N-45342 on January 19, 1952, at Sandspit, British Columbia.

8. That the defendant did not issue a ticket, manifest, or contract to said decedent J. M. Waldrep setting forth the particulars required by Section I of Article 3, of Section I, Chapter II of the said Warsaw Convention.

9. That the Empire of Japan prior to January 18, 1952 subscribed to and ratified the Convention for the Unification of Certain Rules Relating to International Transportation by Air With Additional Protocol, which convention is also known as the "Warsaw Convention."

10. That the Empire of Japan has never revoked, or rescinded its subscription to and ratification of the said Warsaw Convention.

Dated at Seattle this 30th day of August, 1956.

/s/ JOHN W. RILEY,
Attorney for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed August 31, 1956.

[Title of District Court and Cause.]

ANSWER TO PLAINTIFF'S REQUEST FOR
ADMISSIONS OF FACT

Comes Now defendant and in response to plaintiff's request that defendant admit or deny specified allegations made pursuant to Rule 36 of the Federal Rules of Pleading, Practice and Procedure, defendant Northwest Orient Airlines, Inc., in numbered paragraphs corresponding to the numbering of plaintiff's request for admissions of fact, hereby admits, denies and alleges:

1. Defendant admits that Northwest Orient Airlines, Inc., Flight No. 324 of January 18, 19, 1952, originated in the Empire of Japan and was destined for the United States of America. Conceding that said Flight No. 324 was part of an operation conducted by defendant for the United States Government under contract with the United States Government, defendant does not know and is unable to obtain facts upon which it can determine whether or not said flight was "officially chartered", and does not understand what plaintiff means by the term "officially chartered", and therefore denies the same.

2. Defendant denies the allegations of paragraph 2.

3. Defendant denies the allegations of paragraph 3.

4. Defendant denies the allegations of paragraph 4, but concedes that Sandspit, British Col-

umbia, was listed in defendant's manual as an airport where an emergency landing could be made.

5. Defendant is unable to truthfully admit or deny the allegations of paragraph 5 because it has no knowledge as to the facts contained in such request and is unable to secure such knowledge.

6. Defendant denies the allegations of paragraph 6.

7. Defendant is unable to truthfully admit or deny the allegations of paragraph 7 because it has no knowledge as to the facts contained in such request and is unable to secure such knowledge.

8. Defendant denies the allegations of paragraph 8.

9. Defendant denies the allegations of paragraph 9.

10. Defendant admits the allegations of paragraph 10.

Dated at St. Paul, Minnesota, this 17 day of September, 1956.

NORTHWEST ORIENT AIR-
LINES, INC.,

/s/ By A. E. FLOAN,
Vice President and Secretary.

Duly Verified.

Acknowledgment of Service attached.

[Endorsed]: Filed September 24, 1956.

[Title of District Court and Cause.]

ORDER OF CONTINUANCE AND CONSOLIDATION

This matter came on regularly for hearing on the 25th day of September, 1956, before the Honorable John C. Bowen, Judge of the above entitled court on motion of the plaintiff for continuance and order of consolidation, both parties having appeared by their respective counsel of record, the court having considered the records and files herein and in Civil Cause No. 3872 being entitled H. B. Maynard, plaintiff, vs. Northwest Orient Airlines, Inc., defendant; it appearing that both actions are concerned with damages incurred in a single crash of the defendant's aircraft and that the parties having agreed that an order of consolidation should be entered and good cause appearing therefor,

It Is Hereby Ordered that the above entitled action and Civil Cause No. 3872, entitled H. B. Maynard, plaintiff, vs. Northwest Orient Airlines, Inc., defendant, shall be and hereby are consolidated for trial commencing March 12, 1957, beginning at 10:00 o'clock a.m. of that day, or as soon thereafter as counsel may be heard, said actions to be tried together insofar as the matters affecting each party may be so considered, and it is further

Ordered that the above entitled action shall be and hereby is continued for trial from October

16, 1956 until March 12, 1957, beginning at 10:00 o'clock a.m. of that day.

Done in Open Court this 4th day of October, 1956.

/s/ JOHN C. BOWEN,
Judge

Presented and Approved by:

/s/ JOHN W. RILEY, Attorney for Plaintiff.

Approved by:

/s/ CARL G. KOCH, of Karr, Tuttle & Campbell,
Attorneys for Defendant.

[Endorsed]: Filed October 4, 1956.

[Title of District Court and Cause.]

MOTION FOR LEAVE TO AMEND PARAGRAPH IX OF DEFENDANT'S ANSWER

Defendant hereby moves the Court for leave to amend paragraph IX of defendant's answer so that the proper wrongful death statute applicable to the facts of this case may be pleaded. This motion is made and based upon the records and files herein and upon the following affidavit.

/s/ COLEMAN P. HALL,
KARR, TUTTLE & CAMPBELL,
Attorneys for Defendant.

AFFIDAVIT

State of Washington,
County of King—ss.

Coleman P. Hall, being first duly sworn, on oath deposes and states:

That he is one of the attorneys for the above named defendant and makes this affidavit for and on behalf of defendant in support of its motion for leave to amend paragraph IX of its answer to plaintiff's complaint. That defendant desires by said amendment to plead the wrongful death statute of the Province of British Columbia, Canada, which statute defendant feels is applicable to the facts alleged in plaintiff's complaint. That to allow such amendment would impose no hardship on or inconvenience to the plaintiff since the applicability of said statute has been raised numerous times by previous motions made in said cause. That it is necessary that leave to amend be granted in order that the ends of justice be served.

/s/ COLEMAN P. HALL

Subscribed and Sworn to before me this 20th day of February, 1957.

/s/ RUBY TUTMARK,

Notary Public in and for the State of Washington, residing at Seattle.

Acknowledgment of Service attached.

[Endorsed]: Filed February 20, 1957.

[Title of District Court and Cause.]

AFFIDAVIT CONTRA MOTION FOR LEAVE
TO AMEND ANSWER

United States of America,
State of Washington,
County of King—ss.

John W. Riley, being first duly sworn on oath
deposes and says:

That he is one of the attorneys for the above
named plaintiff, makes this Affidavit for and on be-
half of plaintiff in opposition to the Motion of the
defendant now filed herein for leave to amend para-
graph 9 of the defendant's Answer to plaintiff's
Complaint.

Affiant declares that the needs of justice will be
sub-served by the amendment and that the plain-
tiff's cause will be substantially prejudiced by
granting the defendant leave to amend.

The plaintiffs in the above entitled action and
the companion case of Maynard v. Northwest Air-
lines are without substantial funds which would
ordinarily be necessary to prosecute these actions in
that for this reason the parties have consolidated
these matters for trial. Plaintiff has relied in prep-
aration of its case upon the pleadings as they exist
based upon the proposition that the laws of forum
will govern the matters now at issue herein. In the
event that defendant is granted leave to amend,
many substantial and difficult legal issues for which

the plaintiff is not prepared will be presented. Plaintiff does not have funds to retain Canadian counsel to brief the British Columbia law which the defendant intends to assert and if the amendment is granted, plaintiffs will move for continuance of this action in order to afford plaintiffs a reasonable time to prepare the said matter.

The plaintiff's position was disclosed to the defendants over a year ago, as the records and file herein disclose, by memorandum of the plaintiff contra defendant's Motion to Dismiss which called the court's attention to the fact that defendant had not pleaded the British death act and that therefore the law of forum governs according to the well known rules of law of this jurisdiction.

/s/ JOHN W. RILEY

Subscribed and Sworn to before me this 25th day of February, 1957.

[Seal] ROBERT W. WINSOR,
Notary Public in and for the State of Washington,
residing at Bellevue.

[Endorsed]: Filed February 25, 1957

[Title of District Court and Cause.]

AMENDMENT TO PARAGRAPH IX OF
DEFENDANT'S ANSWER

IX and XII Affirmative Defense

Defendant does not have sufficient information to form a belief as to the truth or falsity of the

allegations set forth in the first two lines of Paragraph IX and therefore denies the same. Defendant specifically denies that the alleged beneficiary for whose benefit plaintiff is alleged to have instituted this suit has been damaged in the amount of Fifty Thousand Dollars (\$50,000.00) or in any other amount by reason of the facts alleged herein. Defendant specifically denies the applicability of Section 4.20.010 of the Revised Code of Washington and alleges that the applicable statute on which plaintiff's claim could have been based is Chapter 116, British Columbia Revised Statutes, 1948, entitled, "Families' Compensation Act," Sections 3 and 5, which provide as follows; and which requires dismissal of Plaintiff's Complaint for failure to state a cause of action. That said statute's limitation provisions bar this action.

"Section 3. Whenever the death of a person shall be caused by wrongful act, neglect, or default and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, and notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to an indictable offense."

"Section 5. Not more than one action shall lie for and in respect of the same subject-matter of

complaint; and every such action shall be commenced within twelve calendar months after the death of such deceased person."

KARR, TUTTLE & CAMPBELL,
/s/ COLEMAN P. HALL,
Attorneys for Defendant.

Acknowledgment of Service attached.

[Endorsed]: Filed February 25, 1957.

United States District Court, Western District of
Washington, Northern Division

Civil Action No. 3872

H. D. MAYNARD, Plaintiff,
vs.

NORTHWEST AIRLINES, INC., Defendant.

Civil Action No. 3695

GERALDINE B. GORTER, as Administratrix of
the Estate of John M. Waldrep, Deceased,
Plaintiff,
vs.

NORTHWEST AIRLINES, INC., Defendant.

STIPULATION

It is hereby stipulated by and between the parties to the above-entitled action by and through their respective counsel of record as follows:

That the documents which have been identified by counsel as described hereinafter are true copies of original documents in the possession of the defendant, Northwest Airlines, and that the said copies may, if otherwise admissible, be submitted in evidence in lieu of the originals thereof.

The documents being Exhibit A-1, operating schedule for North Pacific contract flights from Seattle, Washington to Tokyo and from Tokyo to Seattle, in effect November 15, 1951 prepared by defendant under the procedure set forth in the contract between the U. S. Air Force and defendant, referred to in paragraph (8) of the Pre-Trial Order on file herein. Exhibit A-13, report of attendance at defendant's air and sea rescue class by Jane Cheadle, stewardess of flight 324. Exhibit A-16 is the manual assignments of crew members Pfaffinger, Kuhn, and Cheadle. Exhibit A-17 is letter dated January 24, 1952 from E. Hohag, Captain of Flight 324 of January 17, 1952 from Shemya to Anchorage; Exhibit A-18 is maintenance information relative to flight 324 of January 17, 1952, Ship 601/342 contained in letter dated January 21, 1952, from Donald M. Jaffray, defendant's Station Manager, Shemya, to W. D. Gehringer, Superintendent of Costs and Requirements Section of defendant, St. Paul, Minnesota; Exhibit A-19 is report from Tokyo Crew Chief's Log contained in letter dated January 21, 1952, from W. J. Greer, defendant's Chief Mechanic, Tokyo, to Wade Gehringer, Superintendent of Costs and Requirements Section of defendant, St.

Paul, Minnesota; Exhibit A-20 is maintenance reports on Ship 342 (601) contained in letter dated January 19, 1952, from M. B. Lien, defendant's Chief Mechanic, and C. E. Skellett, defendant's Relief Crew Chief, Elmendorf Air Base, to defendant's Wade Gehringer and C. F. Wilde, Superintendent of Line Maintenance, St. Paul, Minnesota; and Exhibit A-21 is defendant's No. 2 maintenance check NWA DC-4 plane No. 601, January 13-15, 1952, containing ground check DC-4, Seattle inspection progress chart, 14 nonroutine work cards, 11 line service check cards, 4 routing order cards, 3 engine propellor change cards, 14 inspection cards, ship preparation card, 10 engine change cards, and 5 equipment service grooming cards.

Dated this 18 day of March, 1957.

WILLIAMS & KINNEAR,
/s/ J. W. RILEY,
Of Counsel Attorneys for Plaintiffs.

KARR, TUTTLE & CAMPBELL,
/s/ CARL G. KOCH,

[Endorsed]: Filed March 18, 1957.

[Title of District Court and Causes.]

PRE-TRIAL ORDER

This matter came on regularly for hearing on the 20th day of February, 1957 before the undersigned judge of the above-entitled Court on notice

to counsel of pre-trial hearing pursuant to Rule 16 of the Federal Rules of Civil Procedure. At the conclusion of hearing on February 20, the Court adjourned the hearings until March 9, 1957 at 10:00 a.m.

Plaintiffs appeared by their attorneys, Williams and Kinnear, John W. Riley, Morell E. Sharp and Ronald A. Murphy, of counsel. Defendant appeared by its attorneys, Karr, Tuttle and Campbell, Mr. Payne Karr and Carl Koch of counsel.

Pursuant to the Federal Rules of Civil Procedure, counsel of the parties having indicated agreement at said hearing as to the matters hereinafter set forth,

It Is Hereby Ordered:

(1) That plaintiffs' Exhibit 1 endorsed by the undersigned judge of the above-entitled Court in the presence of counsel for both parties, identified by counsel of both parties, and delivered, on Motion of the counsel for the defendant to Mr. Morell Sharp of counsel for the plaintiffs, is a true and correct copy of the accident investigation of the Civil Aeronautics Board, file No. 1-0017, released September 15, 1952 by the Civil Aeronautics Board.

If otherwise admissible the said report and attachments or any portion thereof may be received in evidence without additional proof as to the validity, and identity, of the said document as a true and correct copy of said accident investigation report of the Civil Aeronautics Board, pur-

suant to the provisions of the Civil Aeronautics Act.

(2) That plaintiffs' Exhibit 2 is duly endorsed by the undersigned judge of the above-entitled Court, identified by counsel for both parties and on Motion of counsel for the defendant, were delivered to Mr. Morell Sharp, of counsel for plaintiffs, until the time of trial, is a supplemental accident investigation report released by the Civil Aeronautics Board on November 14, 1955 following further investigation of the crash of Northwest Airlines flight 324 at Sandspit, B. C., on January 19, 1952. If otherwise admissible, said report and attachments or any portion thereof may be received in evidence without additional proof as to the validity or identity of the said document.

(3) That Exhibit 3 attached hereto is the true and correct copy in French and in English of the convention and additional protocol between the United States of America and other powers on international air transportation, commonly referred to as the "Warsaw Convention" and that the said Exhibit 3 is for the purposes of the trial of the matters herein a sufficient reproduction of the records of the United States, Department of State, and the Government of Poland which is the depository nation for the Warsaw Convention, and if otherwise admissible shall be received in evidence without additional proof.

(4) That Exhibit 4 attached hereto is a true and correct copy of the adherence of the United States

of America to the said convention and additional protocol between the United States of America and other powers set forth in Exhibit 3 referred to in paragraph (3) above, and if otherwise admissible shall be received in evidence without additional proof.

(5) That Exhibit 5 attached hereto at the time of signing this Order is a true and correct copy of the Families' Compensation Act, Chapter 116, British Columbia Revised Statutes, 1948, and that said Exhibit 5 is for the purposes of the trial of the matters herein an authentic and true copy of such law of British Columbia, and if otherwise admissible shall be received in evidence without additional proof.

(6) That Exhibit 6 attached hereto is an aeronautical planning chart prepared by the United States Air Force, distributed by the United States Coast and Geodetic Survey.

(7) That Geraldine B. Gorter is the duly qualified and acting administratrix of the Estate of Sergeant J. M. Waldrep and that Exhibit 7 is a certified copy of her Letters of Administration issued by the Superior Court of the State of Washington in and for Walla Walla County. That special Letters of Administration, attached hereto as Exhibit 8 were issued prior to the commencement of this action, the same having been issued on the 18th day of January, 1952.

(8) That Exhibit 9 attached hereto is a copy of

the basic contract executed by the U. S. Air Force with the defendant, Northwest Airlines, which prescribes the terms and conditions of payment by the U. S. Air Force for transportation to be performed by the defendant and under which flight 324 of January 19, 1952 was being performed. That "service orders" and schedules for flight 324 which are part of the said contract are not included herein but may be produced and identified at the time of trial.

(9) That Exhibit 10 now in the possession of the Clerk of this Court attached hereto is a true, correct and certified copy of the United States Army Service Record of John M. Waldrep, deceased, the original of which is in the possession of the Department of the Army. That said copy is a photostatic copy, white on black.

(10) That Exhibit 11 attached hereto is a true and correct and certified copy of the United States Air Force Service Record of Huford D. Maynard, the original of which is in the possession of the Department of the Army. That said copy is a photostatic copy, white on black.

(11) If the Court rules that said Exhibits 10 and 11 are otherwise admissible but the Court will not receive them in evidence because the photostats are not black on white, the parties seeking to have either of such Exhibits admitted into evidence shall be authorized, and the Clerk of the Court ordered to deliver such Exhibits to such party for the purposes of enabling such party to

obtain photostats having black print on a white background and such Exhibits shall have the same authority as those from which prepared.

(12) That the Empire of Japan ratified and filed its adherence to the Warsaw Convention on or about May 20, 1953.

(13) That Exhibit A-2 is the Air Passenger Manifest listing the passengers embarking on Flight No. 324 on January 17, 1952, at Haneda Air Base, Japan; Exhibit A-3 is the Flight Plan of Flight 324 of January 18 and 19, 1952, covering the Anchorage to McChord Field leg of the flight, and includes a forecast cross-section from Anchorage to Seattle flight plan from Elmendorf Air Base to McChord Field, extracts from weather sequence, weather forecast and aircraft service check; Exhibit A-4 is the Weight and Balance Manifest for defendant's Flight 324 of January 18 and 19, 1952, from Elmendorf Air Base to Tacoma, Washington; that Exhibit A-5 is the Flight Position Log, Flight 324 of January 18 and 19, 1952, certified to be a true copy by R. E. Middlestaedt, Chief Clerk of the Flight Operations Division of the defendant; Exhibit A-6 is the Flight Control Log of Flight 324 of January 18 and 19, 1952, prepared by E. B. Smith, defendant's Area Chief Flight Superintendent, Elmendorf Air Base; Exhibit A-7 is outline of pilot history of John J. Pfaffinger, pilot of Flight 324 of January 18 and 19, 1952; Exhibit A-8 is portions of training record of John J. Pfaffinger dated February 4, 1952; Ex-

hibit A-9 is outline of pilot history of Kenneth H. Kuhn, co-pilot of Flight 324 of January 18 and 19, 1952; Exhibit A-10 is a portion of training record of Kenneth H. Kuhn dated February 4, 1952; Exhibit A-11 is summary of records of trips flown together by pilot Pfaffinger and co-pilot Kuhn, dated February 5, 1952; Exhibit A-12 is Before Flight Check Out Inspection DC-4 Elmendorf Air Base, January 18, 1952, Ship No. 342, and air service check; Exhibit A-14 is Before Flight Check Out Inspection, Seattle, January 15, 1952, Ship No. 601, Trip No. 324/15; Exhibit A-15 is Northwest Airlines, Inc. interoffice communication from Bert Wean, Service Chief, Shift I, Seattle, to E. K. Pitcher, Supervisor of Equipment Service Maintenance Division, Seattle, dated January 24, 1952, listing equipment put on Ship 601 and sketch showing locations.

That each of the foregoing exhibits attached hereto is an authentic and true copy of the original thereof and a part of the business records and files of defendant, and if otherwise admissible, each may be received in evidence without additional proof as to validity and identity.

(14) It is further ordered, the parties hereto having stipulated, that the foregoing Exhibits attached hereto are authentic and true copies of the original thereof and if otherwise admissible may be received in evidence without additional proof of authenticity. The question of the admissibility in evidence of any of the above and foregoing evidence is reserved until the time of trial.

Done in open court this 18th day of March, 1957.

/s/ JOHN C. BOWEN,

Judge

Approved for Entry:

/s/ JOHN W. RILEY, Attorneys for Plaintiffs.

Approved for Entry:

/s/ CARL G. KOCH, Attorneys for Defendant.

[Endorsed]: Filed March 18, 1957.

[Title of District Court and Cause.]

TRIAL AMENDMENT OF COMPLAINT

Plaintiff's complaint is hereby amended by adding to Paragraph IX of Count I on page 4 of the complaint an additional paragraph stating the following:

"That the death of the decedent was directly and proximately caused by the following specific negligent acts, errors, wilful omissions and misconduct of the defendant and its agents:

(1) That engine No. 1 and aircraft were negligently inspected and maintained by defendant.

(2) That the safety literature kept in the aircraft for distribution to passengers was inadequate and related to a different configuration of aircraft and different safety equipment, and further that literature was not distributed to the passengers.

(3) That the aircraft was not adequately equipped with safety and survival equipment.

(4) That defendant violated Civil Aeronautics Regulations and company regulations in that it did not consult with and advise the pilot in preparation for landing following loss of the Number 1 engine.

(5) In attempting to land the aircraft too far down the runway and then attempting to take off again after it had become too late to gain proper flying speed.

(6) The lift rafts in the aircraft were stowed aboard the aircraft in such a manner that they were inaccessible when needed.

(7) Defendant failed to effectuate any precautionary and safety procedure despite the fact that the plane was operating on only three engines and was attempting to make a night landing on an ill equipped, poorly illuminated field located on a small snow covered island.

Dated this 26th day of March, 1957.

JOHN W. RILEY and
WILLIAMS & KINNEAR,

/s/ By JOHN W. RILEY

[Endorsed]: Filed March 26, 1957.

[Title of District Court and Cause.]

MOTION FOR LEAVE TO AMEND DEFENDANT'S ANSWER; MOTION TO RE-OPEN FOR FURTHER EVIDENCE

Defendant hereby respectfully moves the Court for leave to amend defendant's Answer and affirmative defense to count one of plaintiff's Complaint, a copy of which proposed amendment is attached hereto. The purpose of said amendment is to plead the law in effect January 19, 1952, at the place where the Court, after trial, found the accident occurred, which law constitutes a complete defense to count one of plaintiff's Complaint.

Defendant further moves the Court to re-open this cause for the presentation of evidence and testimony relating to said law for the purpose of enabling the Court to determine the law applicable to the facts of this case.

These motions are made and based upon the records and files herein and the affidavit attached hereto.

KARR, TUTTLE & CAMPBELL,
/s/ CARL G. KOCH,
Attorneys for Defendant.

AFFIDAVIT

State of Washington,
County of King—ss.

Carl G. Koch, being first duly sworn, on oath deposes and states:

That he is one of the attorneys for the above-

named defendant and makes this affidavit for and on behalf of defendant in support of its above-stated motions. That according to the Washington conflict of laws rule, the law of the place of injury governs a cause of action, if any, for tort. Plaintiff in her complaint alleged that the crash of the airplane in which Waldrep died occurred in British Columbia, Canada. Defendant by its answer admitted this allegation and pleaded as an affirmative defense the British Columbia Families' Compensation Act, the law of admitted place of injury, for the purpose of showing that plaintiff's action was barred. At no time prior to or during the trial did either plaintiff or defendant maintain or seek to prove that the accident did not happen in British Columbia. Based upon the admitted fact, defendant introduced testimony in support of its affirmative defense for the purpose of establishing the applicability of the said British Columbia act.

However, the Court in its Oral Decision found that the accident did not occur in British Columbia, and defendant is now for the first time confronted with this assertion. Prior to this time defendant had no occasion to plead or prove the law existing outside of British Columbia, and any attempt to do so would have been improper and objectionable. It was only after the Court's finding that the law outside of British Columbia became pertinent and applicable.

Defendant has suffered complete surprise by the Court's finding, and defendant by its motions now

seeks an opportunity to place before the Court the law applicable to the now established facts of this case. Such law does not permit a recovery by plaintiff and constitutes a complete defense to her action. If defendant is not afforded an opportunity to plead and prove the law in effect at the place where the Court has found the accident occurred, defendant would be permanently prejudiced. The interests of justice would best be served and indeed require that defendant be given such opportunity.

/s/ CARL G. KOCH

Subscribed and Sworn to before me this 13th day of May, 1957.

[Seal] /s/ MURIEL MAWER,
Notary Public in and for the State of Washington,
residing at Seattle.

Acknowledgment of Service attached.

[Endorsed]: Filed May 14, 1957.

[Title of District Court and Cause.]

AMENDMENT TO ANSWER AND AFFIRMATIVE DEFENSE

I.

That if on January 19, 1952, at a point without British Columbia, Canada, more than one-half mile seaward from low water mark, near Sandspit, British Columbia, the airplane operated by defendant crashed and the death of decedent Wal-

drop occurred, there was no applicable law under which an action to recover for the wrongful death of the said Waldrep could be brought or maintained.

II.

That the Families' Compensation Act of British Columbia heretofore pleaded, Sections 3 and 5 of which are set forth verbatim in defendant's Answer, is a wrongful death statute enacted by the Legislature of British Columbia and applies in the Territory of British Columbia seaward to low water mark. *Young vs. Industrial Chemical Co., Ltd. and Brunt*, (1939) 2 WWR 468, decided in 1939 by the Supreme Court of British Columbia, held that the Families' Compensation Act does not have extraterritorial effect. This case is considered to establish the controlling British Columbia law, although *LeVal vs. S. S. Giovanni Amendola*, 17 WWR 144, decided in 1955 by the Admiralty side of the Exchequer Court, a federal court of the Dominion of Canada sitting in British Columbia, held that in a case in which the Admiralty Court had jurisdiction it might properly apply the wrongful death statute of British Columbia, namely the Families' Compensation Act.

There is no other legislation of the Territory of British Columbia creating a cause of action for wrongful death. A cause of action for wrongful death did not exist at common law. British Columbia and the Dominion of Canada are common law jurisdictions.

III.

The only other law making authority with power to legislate in the Territory of British Columbia and in the coastal waters of Canada surrounding British Columbia is the Parliament of the Dominion of Canada. Apart from the Carriage By Air Act of 1939 which implements the provisions of the Warsaw Convention, which was ratified prior to the date of passage by said act by Canada, the only statute of the Dominion of Canada creating a cause of action for wrongful death is the Canada Shipping Act of 1934 as amended in 1948 and contained in Chapter 35 of the Statutes of Canada for 1948. Section 725 to Section 733, inclusive, of the Canada Shipping Act, which appear as Section 53, of Chapter 35 of the Statutes of Canada for 1948, are as follows:

“Part XVII.

“Fatal Accidents.

“725. In this Part,

“(a) ‘child’ includes a son, daughter, grandson, granddaughter, stepson, stepdaughter, adopted child and a person to whom the deceased stood in loco parentis;

“(b) ‘dependants’ means the wife, husband, parents and children of the deceased; and

“(c) ‘parent’ includes a father, mother, a grandfather, grandmother, stepfather, stepmother, a person who adopted a child, and a person who stood in loco parentis to the deceased. 1948, c. 35, s. 53.

“726. Where the death of a person has been

caused by such wrongful act, neglect or default as if death had not ensued would have entitled the person injured to maintain an action in the Admiralty Court and recover damages in respect thereof, the dependants of the deceased may, notwithstanding his death, and although the death was caused under circumstances amounting in law to culpable homicide, maintain an action for damages in the Admiralty Court against the same defendants against whom the deceased would have been entitled to maintain an action in the Admiralty Court in respect of such wrongful act, neglect or default if death had not ensued. 1948, c. 35, s. 53.

“727. (1) Every action under this Part shall be for the benefit of the dependants of the deceased, and except as provided in this Part shall be brought by and in the name of the executor or administrator of the deceased, and in every such action such damages may be awarded as are proportioned to the injury resulting from the death to the defendants respectively for whom and for whose benefit such action is brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided among the dependants in such shares as may be determined at the trial.

“(2) In assessing the damages in any action there shall not be taken into account any sum paid or payable on the death of the deceased or any future premiums payable under any contract of assurance or insurance. 1948, c. 35, s. 53.

“728. The defendant may pay into court one

sum of money as compensation for the wrongful act, neglect or default, to all persons entitled to such compensation without specifying the shares into which it is to be divided. 1948, c. 35, s. 53.

“729. Not more than one action lies for and in respect of the same subject matter of complaint, and every such action shall be commenced within twelve months after the death of the deceased and not afterwards. 1948, c. 35, s. 53.

“730. (1) The plaintiff shall, in his statement of claim, set forth the persons for whom and on whose behalf the action is brought.

“(2) There shall be filed with the statement of claim an affidavit by the plaintiff in which he shall state that to the best of his knowledge, information and belief the persons on whose behalf the action is brought as set forth in the statement of claim are the only persons entitled or who claim to be entitled to the benefit thereof.

“(3) The Admiralty Court or a judge thereof, if of opinion that there is a sufficient reason for doing so, may dispense with the filing of the affidavit. 1948, c. 35, s. 53.

“731. (1) When there is no executor or administrator of the deceased, or there being such executor or administrator, no such action is, within six months after the death of the deceased, brought by such executor or administrator, such action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by such executor or administrator.

“(2) Every action so brought shall be for the benefit of the same persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by such executor or administrator. 1948, c. 35, s. 53.

“732. (1) Where the compensation has not been otherwise apportioned, a judge in chambers may apportion the same among the persons entitled.

“(2) The judge may in his discretion postpone the distribution of money to which infants are entitled and may direct payment from the undivided fund. 1948, c. 35, s. 53.

“733. Where actions are brought by or for the benefit of two or more persons claiming to be entitled, as wife, husband, parent or child of the deceased, the court may make such order as it may deem just for the determination not only of the question of the liability of the defendant but of all questions as to the persons entitled under the provisions of this Act to the damages, if any, that may be recovered. 1948, c. 35, s. 53.”

Section 729 set forth above requires a wrongful death action to be commenced within twelve months after the death of a deceased and not afterwards. This section creates a statute of limitations which is part and parcel of the right of action created and is a bar to plaintiff's cause of action under the express provisions of R.C.W. 4.16.290. The aforesaid Canada Shipping Act as amended in 1948 was in full force and effect January 19, 1952, the date of the death of said Waldrep.

IV.

Section 726 of the Canada Shipping Act provides that the wrongful death action provided for in Part XVII, entitled Fatal Accidents, of the Canada Shipping Act shall be maintained in the Admiralty Court provided the deceased would have been entitled, had death not ensued, to maintain an action in the Admiralty Court to recover damages. The decisions construing this section of the Canada Shipping Act have not departed from the requirement that the cause of action for wrongful death must be maintained in the Admiralty Court. The Admiralty Court is the Exchequer Court of Canada sitting on its Admiralty side. The Exchequer Court is a statutory court which does not have general common law jurisdiction. In exercising the admiralty jurisdiction, the Exchequer Court is limited to those subjects set out in the Admiralty Act. In tort actions for damage the jurisdiction of the Admiralty Court is confined to claims for damage received by a ship or damage done by a ship. This limitation on jurisdiction excludes injuries sustained by passengers when an aircraft crashes into the water. The jurisdiction of the Admiralty Court as far as aircraft are concerned is strictly limited to a collision between an airplane and a ship. Such jurisdiction does not extend or apply to the death of an airplane passenger when an airplane crashes into the water, and particularly to the decedent Waldrep. The Admiralty Act of 1934, Chapter 31, Statutes of Canada, 1934, provides in part as follows:

“Jurisdiction

“18. (1) The jurisdiction of the Court on its Admiralty side extends to and shall be exercised in respect of all navigable waters, tidal and non-tidal, whether naturally navigable or artificially made so, and although such waters are within the body of a county or other judicial district, and, generally, such jurisdiction shall, subject to the provisions of this Act, be over the like places, persons, matters and things as the Admiralty jurisdiction now possessed by the High Court of Justice in England, whether existing by virtue of any statute or otherwise, and be exercised by the Court in like manner and to as full an extent as by such High Court.

“(2) Without restricting the generality of subsection (1) of this section, and subject to the provisions of subsection (3) thereof, section 22 of the Supreme Court of Judicature (Consolidation) Act, 1925, of the Parliament of the United Kingdom, which is Schedule A to this Act, shall in so far as it can, apply to and be applied by the Court, *mutatis mutandis*, as if that section of that Act had been by this Act re-enacted, with the word ‘Canada’ substituted for the word ‘England’, the words ‘Governor in Council’ substituted for ‘His Majesty in Council’, the words ‘Canada Shipping Act’ (with the proper references to years of enactment and sections) substituted, except with relation to mortgages, for the words ‘Merchant Shipping Act’ (and any equivalent references to years of enactment and sections) and with the words ‘or

other judicial district' added to the words 'body of a county', wherever in such section 22 of such Supreme Court of Judicature (Consolidation) Act, 1925, any of the indicated words of that Act appear.

"(3) Notwithstanding anything in this Act or in the Act mentioned in subsection (2), the Court has jurisdiction to hear and determine

"(a) any claim

(i) arising out of an agreement relating to the use or hire of a ship,

(ii) relating to the carriage of goods in a ship, or

(iii) in tort in respect of goods carried in a ship,

"(b) any claim for necessities supplied to a ship,
or

"(c) any claim for general average contribution.

"(4) No action in rem in respect of any claim mentioned in paragraph (a) of subsection (3) is within the jurisdiction of the Court unless it is shown to the Court that at the time of the institution of the proceedings no owner or part owner of the ship was domiciled in Canada.

"(5) The jurisdiction of the Court over claims for services in the nature of salvage includes jurisdiction in rem and in personam in relation to salvage of life or property of, from or by aircraft on or over the sea or any tidal waters and on or over the Great Lakes of North America, so called, and such jurisdiction shall be exercised and applied in the same manner, to the same extent and with

the same effect as if such aircraft were ships; but the Governor in Council may *be* Order in Council make modifications of and exemptions from the provisions of this subsection to such extent as appears to him necessary or expedient.

“(6) The Court on its Admiralty side has and shall exercise such other jurisdiction and execute such power and authority, in or relating to admiralty matters, as

“(a) heretofore have been conferred upon it by any Act of the Parliament of Canada, or

“(b) hereafter may be conferred upon it, at the request and with the consent of Canada, by any Act of the Parliament of the United Kingdom or of any British Dominion, enacted in execution of any agreement for reciprocal legislation with relation to Admiralty jurisdiction or to shipping and navigation made or to be made and including Canada as a party thereto.

“(7) The jurisdiction of the Court on its Admiralty side shall, so far as regards procedure and practice, be exercised in the manner provided by this Act or by general rules and orders, and where no special provision is contained in this Act or in general rules and orders with reference thereto any such jurisdiction shall be exercised as nearly as may be in the same manner as that in which it may now be exercised by the Court. 1934, c. 31, s. 18.

The Supreme Court of Judicature (Consolidation) Act, 1925, of the Parliament of the United Kingdom, incorporated by reference in Section 18

(2) of the Admiralty Act above set forth, appears as Schedule A, pages 13 to 15, of the Revised Statutes of Canada for 1952, the pertinent and material portions of which are as follows:

“(1) The High Court shall, in relation to admiralty matters, have the following jurisdiction (in this Act referred to as ‘admiralty jurisdiction’) that is to say:

“(a) Jurisdiction to hear and determine any of the following questions or claims:

“(i) Any question as to the title to or ownership of a ship, or the proceeds of sale of a ship remaining in the admiralty registry, arising in an action of possession, salvage, damage, necessities, wages or bottomry;

“(ii) Any question arising between co-owners of a ship registered at any port in England as to the ownership, possession, employment or earnings of that ship, or any share thereof, with power to settle any account outstanding and unsettled between the parties in relation thereto, and to direct the ship, or any share thereof, to be sold, or to make such order as the Court thinks fit;

“(iii) Any claim for damage received by a ship, whether received within the body of a county or on the high seas;

“(iv) Any claim for damage done by a ship.”

The Admiralty Act of 1934 and the Supreme Court of Judicature (Consolidation) Act of the United Kingdom of 1925 in their entirety and the portions set forth verbatim above were in full force and effect January 19, 1952.

That the Dominion of Canada having exclusive power to legislate over shipping and in the navigable waters surrounding British Columbia, has not changed the common law or created any wrongful death statute or other act entitling the administrators of Waldrep's estate or persons acting for the benefit of his surviving dependants to maintain an action to recover damages by reason of his death as aforesaid.

V.

The law of British Columbia and of the Dominion of Canada is based on the common law. At common law as it existed in British Columbia and in Canada January 19, 1952, there was no cause of action for the death of a person caused by the default or neglect of another person. No statute creating an action for wrongful death in derogation of the common law under which plaintiff can maintain an action was in effect January 19, 1952, at the place where the airplane operated by defendant crashed and the decedent Waldrep died.

VI.

That if the place where the airplane operated by defendant crashed and the decedent Waldrep died was at a point seaward from and beyond the territorial waters of Canada and without the jurisdiction of the courts of British Columbia in the Dominion of Canada, then the accident and death occurred at a point which on January 19, 1952, was not within the territory of any government or sovereignty; at a point where there was no system

of laws in force; where there was no law or statute under which plaintiff's action can be maintained.

Dated this 13th day of May, 1957.

KARR, TUTTLE & CAMPBELL,
Attorneys for Defendant.

Acknowledgment of Service attached.

[Endorsed]: Lodged May 14, 1957.

[Title of District Court and Causes.]

COURT'S DECISION

The Court: From a preponderance of the evidence in these two cases consolidated for trial, the Court, so far as pertains to each, finds, concludes and decides as follows:

That the place where the decedent Waldrep died and where his death was caused and where plaintiff Maynard was injured was at a point in salt water more than a half mile out seaward from low water mark near Sandspit, British Columbia, Dominion of Canada.

That the British Columbia Families' Compensation Act, which provides an action for wrongful death similar to that provided for wrongful death under the laws of the United States of America and the various states thereof under so-called wrongful death acts, does not apply nor govern the rights of the plaintiff Gorter in this case which are asserted against the defendant in plaintiff Gorter's action growing out of the alleged wrongful death of the

decedent Waldrep. Such death was not caused, according to British Columbia law, at a place within British Columbia jurisdiction because the place of death was not above the low water mark made by tidal low water on the shores of the British Columbia land near which the death of said decedent Waldrep occurred, so far as concerns the twelve-month limitation of time within which the action might be commenced in respect to said wrongful death of said Waldrep. Therefore, such time limit law of British Columbia does not apply and the defendant should take nothing by reason of the defendant's affirmative defense concerning that issue, it being the finding, conclusion and decision of the Court that the allegations of that affirmative defense and each and all of defendant's other affirmative defenses as to Count I of plaintiff Gorter's complaint are not sustained by a preponderance of the evidence in this case.

It is further from such preponderance of the evidence the finding, conclusion and decision of the Court that the action in the Gorter case for wrongful death on account of the matters and things therein alleged has been commenced within the time provided by law of the State of Washington which governs the right of action herein sued upon in Count I of the Gorter case, no other applicable law being pleaded or proved.

It is further the finding, conclusion and decision of the Court that, as alleged by plaintiff, the death of said decedent Waldrep and the injuries sustained by plaintiff Maynard were caused wrongfully and

negligently by reason of the matters and things and acts of negligence, omissions and misconduct on the part of the defendant as follows:

1. That the No. 1 engine on the aircraft on which the decedent Waldrep and plaintiff Maynard were passengers was negligently inspected and maintained by the defendant.

2. That the safety literature kept in the aircraft for distribution to passengers was inadequate and related to a configuration of aircraft different from the aircraft in use on the flight here in question, and that safety equipment different from that mentioned in the literature was in use upon this aircraft; and, further, such literature as was available for distribution to the passengers was not in fact distributed among them, nor as directed in the literature itself and in the defendant's corporate and business requirements; and defendant negligently failed to distribute the literature to and among the passengers, including the decedent Waldrep and plaintiff Maynard.

3. That the defendant violated the Civil Aeronautics Regulations and also the defendant's company regulations in that the defendant negligently did not consult with and advise the pilot in his preparation for landing following the loss and going out of commission of the No. 1 engine here in question.

4. That defendant's pilot was negligent in first landing the aircraft too far down the runway at Sandspit, British Columbia, and then thereafter attempting to take the airplane off again into the air

at a point on the airstrip when the plane had gone too far down towards the end of the airstrip to permit the gaining of necessary and proper flying airspeed and become again safely airborne before the plane reached the far end of the airstrip.

5. That the life rafts in the aircraft were stowed aboard it in such a manner that they were inaccessible when emergently needed by the passengers in that they were stowed in places other than those designated, and as to which places the passengers were not informed; and, also, other life-saving equipment in the airplane was placed at locations in the airplane not in conformity with the statements in such literature as was on the plane, and no other information was given or available to be given to the passengers as to the actual location of such other equipment.

6. That the defendant failed to effectuate any precautionary or safety procedure for emergency landing, despite the fact that the plane was operating on only three engines and was attempting to make a night landing on an airstrip unfamiliar to the pilot, and, under all the circumstances of a snow-covered airstrip and impaired plane maneuverability due to lessened engine power which surrounded the pilot at the time he was attempting to effect the landing of the plane, the airstrip was not suited for and was an unsafe landing place for use by this airplane.

7. That such impairments of snow cover upon the airstrip and of less maneuverability of the airplane because of loss of engine power brought into

focus and made more potent the influences surrounding the pilot trying to make the landing which related to the pilot's unfamiliarity with the characteristics of the airfield.

8. That defendant and its pilot were further negligent in causing this crippled airplane to resume its flight and to depart from the last airfield on which it was safely landed, in view of all the flying conditions surrounding it and of the history of its No. 1 engine's excessive oil consumption, in view of the fact that it was known to the defendant and its pilot in charge of the flight that the next airfield at which this plane was scheduled to land was too far away from the field from which the last departure of the plane was made to justify the risk of uncertainty as to how long a four-engine plane like that on this flight could safely fly without misfortune if one of its engines should go out of commission on such a long flight, and in view of the fact that the aircraft could not reasonably expect to land if necessary at unfamiliar or familiar airfields with the same facility and ease or success with which it might be landed at such fields if all four engines were in operation and in proper condition.

9. Finally, that the defendant was further negligent in failing to give to the passengers, including the decedent Waldrep and the plaintiff Maynard, specific safety instructions and related information much needed and more emergently needed after the plane crashed and came in contact with the sea water and after the plane lay partly submerged in

the water, and failed to expedite rescue operations.

That as a proximate result of such negligence of the defendant and its pilot the decedent Waldrep lost his life as alleged and by reason of such wrongful death the plaintiff is entitled to recover as administratrix in the Gorter case for the benefit of the decedent's minor child for whose benefit that action was filed and is now pending.

In the Gorter case, respecting the amount of damages to be allowed to plaintiff on account of the wrongful death of the decedent Waldrep, the Court from a preponderance of the evidence finds, concludes and decides that, although the decedent was youthful, he was devoted to his wife and their future child born only a few days after his death, and had a serious and definite intention to provide suitable and adequate support and care for them; that he had while at home from public service gone to school to better prepare for military service and other useful work and intended to complete his schooling; that he had advanced in military rank to that of Sergeant First Class in the United States Army, his rating when his death occurred, receiving therefor base pay of grade "E-6" with extra overseas duty pay and other allowances, all amounting to more than \$300.00 monthly; that at the time of his death he was as usual in normal good health and expected to so continue permanently in the future with as good as and better earnings than he had received as Sergeant First Class; and

That the decedent father was and was likely to continue to be permanently in the future amply

able to provide suitable, expensive and valuable support, care and education for his minor daughter Judith Ann throughout her minority; that she will need very substantial sums of money to meet the valuable education and training to which she was entitled from her father; that she is now an admirable little girl of about five years of age who at the time of her appearance in court during this trial convinced the Court that she is an intelligent child with an attractive personality and with bright prospects for future accomplishment, and the evidence is convincing that she is gifted in her music and school interests and generally she seems to be a child whose proper support, care and education will be of great value to her and would have been correspondingly expensive to her deceased father had he lived to provide it; that his obligation to provide for her such proper support, care and education is not made less valuable because of any existing danger of selfish or wasteful mismanagement by those likely to administer any money relief recovered for her benefit in this court. On the contrary, the Court is convinced by the evidence that any such relief will be used for her basic needs under guidance of Judith Ann's trustworthy relatives, including her mother's sister, Mrs. Bloth, who is a very intelligent, experienced and capable businesswoman and mother of her own young teenage daughter.

That from a preponderance of the evidence the Court finds, concludes and decides that in the Gorter case the decedent's estate and the plaintiff for

the benefit of decedent's minor daughter are entitled to recover from defendant the total sum of \$40,000.00 on account of decedent's wrongful death.

That as to the plaintiff Maynard, and from a preponderance of the evidence, the Court finds, concludes and decides that the defendant take nothing on account of its affirmative defenses, and that the plaintiff Maynard has sustained material injuries and damages in part as alleged in his complaint as amended.

That, however, the plaintiff Maynard's injuries are much less serious in nature and extent than were experienced by a number of other passengers. That as a passenger on the crashed airplane he suffered a great deal of pain and anguish by reason of the chill resulting from the immersion of his feet and legs for a number of hours in that cold ocean water into which the airplane crashed near Sandspit, British Columbia, on the day and at the time of this accident, and his blood circulation was damaged and he suffered in body and mind from the trauma of such water chill and exposure and from the not too important surface abrasions received by him on and about his person, and was thereby disabled for several days, during part of which time he received medical and hospital treatment and care.

That he was discharged from military service within a reasonable time after the accident which is the subject of this litigation, and, so far as the proof shows, that discharge from military service at that time was without medical incident. There

is no evidence that the plaintiff Maynard claimed or that he was diagnosed as having any physical impairment at that time on account of anything alleged in this action.

The Court is not strongly impressed by the testimony of the plaintiff Maynard regarding the symptoms which he says he has experienced in the following years of his military re-enlistments and has continued, according to his contentions, to experience up to this time.

The most outstanding fact bearing upon whether or not he continues or has continued to experience trouble with his blood circulation since his discharge from the military service next following this accident is that no attending physician regularly treating or examining him in the course of his daily life has ever noted any cause for treatment or has treated him for any bad effects of this accident so far as the proof in this case shows.

That, nevertheless, the plaintiff Maynard did sustain substantial damages, and from a preponderance of the evidence the Court finds, concludes and decides that for all his injuries, pain and suffering which he experienced as a direct and proximate result of the defendant's negligence alleged in plaintiff Maynard's complaint, he has sustained injuries and damages in the total sum of \$2,500.00, for all of which he is entitled to recover against the defendant.

In each case, the Gorter case and also in the Maynard case, the plaintiff will be awarded her and his taxable costs against the defendant.

Mr. Koch: May I ask under which count the Court is entering judgment in the wrongful death action?

The Court: Answering specifically the question last stated, the Court does make the findings, conclusions and decision and determination and award of damages announced already in the Gorter case in respect to plaintiff's so-called first count.

I ask counsel on both sides if either contends that the Court cannot legally deny recovery in respect to the second count and the third count without, by the mere denial of recovery as to each, acting inconsistently with the Court's allowance of recovery on the first count.

Mr. Koch: The prayer says——

The Court: My understanding is there is no such inconsistency. What is your theory?

Mr. Koch: That is my belief.

The Court: In other words, that each of the second and third counts is alternative with the first?

Mr. Koch: That is what it states.

The Court: In the Gorter case, the recovery is allowed in respect to only Count I. There is no recovery allowed in respect to Count II or Count III.

As to the Maynard case, is there any similar situation in that?

Mr. Riley: I don't believe there would be, because it is not separated in counts.

The Court: There is no separation of counts. There is only one cause of action.

Mr. Koch: Your Honor, the reason I called this

matter to the Court's attention is because under the second count, which is the Warsaw Convention, there is a limitation of liability where the maximum recovery is \$8,300.00.

The Court: The Court has already disposed of it, as I understand it. No recovery is allowed on the second count or the third count.

Mr. Koch: The second count, the Warsaw Convention, does not apply?

The Court: The Court does not grant any relief on the second count, nor on the third count.

Wherever conflict occurs between the pre-trial order and the rulings of the Court during the trial, the latter will prevail.

[Endorsed]: Filed May 15, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on regularly for trial before the above entitled court, the Honorable John C. Bowen, Judge, on the 21st day of March, 1957. Plaintiff appeared by her attorneys, John W. Riley, and Williams & Kinnear, Ronald A. Murphy of counsel. Defendant appeared by its attorneys, Karr, Tuttle & Campbell, Carl G. Koch and Payne Karr of counsel.

On April 17, 1957, plaintiff and defendant each concluded their respective causes in chief, rebuttal

and surrebuttal respectively, offering no further evidence.

The court having considered the records, files and pleadings, the exhibits and testimony of all the witnesses and the arguments of counsel, now makes the following

Findings of Fact

1. That the plaintiff, Geraldine Gorter is the duly qualified and acting administratrix of the estate of the decedent, John M. Waldrep and authorized to bring this action under and by virtue of the laws of the State of Washington.

2. That the decedent, John M. Waldrep, an American citizen died on the 19th day of January, 1952, in the crash of an airplane operated by defendant Northwest Airlines, Inc., at a point in salt water more than a half mile out seaward from low water mark and off shore of Sandspit, British Columbia, Dominion of Canada. At the time of the death of decedent he was survived by his wife, Faye Waldrep, an American citizen, who thereafter on January 22, 1952, bore decedent's child, Judith Anne Waldrep, which child was and is the lawful issue of decedent and his marriage to the said Faye Waldrep. Prior to the commencement of this action and subsequent to the death of decedent, John M. Waldrep, the said Faye Waldrep died leaving the said minor child, Judith Anne Waldrep an orphan in the care of relatives. The said minor child is the only surviving issue and dependent of the decedent, John M. Waldrep.

3. Defendant is a corporation of the State of

Minnesota, of which it is a citizen, doing business in the State of Washington, within the jurisdiction of this court. At the time of his death, the decedent, John M. Waldrep was a passenger on one of the defendant's aircraft designated as "Flight 324" of defendant, Northwest Orient Airlines of January 19, 1952. The said flight was being performed by employees of the defendant Northwest Airlines operating a Douglas DC-4 aircraft, serial number 45342. Decedent had boarded the defendant's said aircraft in Tokyo, Japan on January 17, 1952, enroute to McChord Air Force Base in Tacoma, Washington via Shemya, Aleutian Islands, and Anchorage, Alaska.

4. On the morning of January 19, 1952, at a point approximately 75 miles southwest of Sitka, Alaska, the number 1 engine on defendant's said aircraft failed in flight after the said aircraft had departed Anchorage, Alaska, enroute to the Seattle, Washington area. The pilot of the said aircraft thereupon proceeded to Sandspit, British Columbia which was a point approximately one and three quarters hours flying time from the said place of engine failure, to attempt an emergency landing.

5. The death of decedent, John M. Waldrep was, as alleged by plaintiff, the direct and proximate result of the crash of defendant's said aircraft, which was directly and proximately caused wrongfully and negligently by reason of acts of negligence, omissions and misconduct of the defendant.

6. That the defendant was guilty of wrongful

omissions and misconduct and was negligent in the following respects and particulars, to-wit:

a. That the No. 1 engine on the aircraft on which the decedent Waldrep was a passenger was negligently inspected and maintained by the defendant.

b. That the safety literature kept in the aircraft for distribution to passengers was inadequate and related to a configuration of aircraft different from the aircraft in use on the flight here in question.

c. That safety equipment different from that mentioned in the literature was in use upon this aircraft.

d. That such literature as was available for distribution to the passengers was not in fact distributed among all of them, nor as directed in the literature itself and in the defendant's corporate and business requirements.

e. That defendant negligently failed to distribute the literature to and among the passengers, including the decedent Waldrep.

f. That the defendant violated applicable rules and regulations and also the defendant's company regulations in that the defendant negligently did not consult with and advise the pilot in his preparation for landing following the loss and going out of commission of the No. 1 engine here in question.

g. That defendant's pilot was negligent in first landing the aircraft too far down the runway at Sandspit, British Columbia, and then thereafter attempting to take the airplane off again into the air at a point on the airstrip when the plane had

gone too far down towards the end of the airstrip to permit the gaining of necessary and proper flying airspeed and become again safely airborne before the plane reached the far end of the airstrip.

h. That the life rafts in the aircraft were stowed aboard it in such a manner that they were inaccessible when emergently needed by the passengers in that they were stowed in places other than those designated, and as to which places the passengers were not informed; and, also, other lifesaving equipment in the airplane was placed at locations in the airplane not in conformity with the statements in such literature as was on the plane, and no other information was given or available to be given to the passengers as to the actual location of such other equipment.

i. That the defendant failed to effectuate any precautionary or safety procedure for emergency landing, despite the fact that the plane was operating on only three engines with impaired maneuverability, attempting to make a night landing on an airstrip unfamiliar to the pilot, which was snow-covered and was not suited for and was an unsafe landing place for use by this airplane.

j. That defendant and its pilot were further negligent in causing this crippled airplane to resume its flight and to depart from Anchorage, Alaska, which was the last airfield on which it was safely landed, in view of all the flying conditions surrounding it and of the history of its No. 1 engine's excessive oil consumption.

k. That the defendant was further negligent in

failing to give to the passengers, including the decedent Waldrep, specific safety instructions and related information much needed and more emergently needed after the plane crashed and came in contact with the sea water and after the plane lay partly submerged in the water.

1. That defendant failed to expedite rescue operations after the crash or to alert rescue facilities when informed that the said aircraft was in an emergency status after failure of its No. 1 engine.

7. That during said flight and at the time of said crash the aircraft was in the sole and exclusive control of the defendant and that at such time and place the defendant was performing services for the United States Government as an independent contractor and not as agent of the United States Government.

8. That as an affirmative defense to complaint of the plaintiff in Count I, the defendant has pleaded certain sections of an act designated as "The British Columbia Families Compensation Act", as a possible bar to the plaintiff's cause of action. That the defendant has not sustained, by preponderance of the evidence in this case, sufficient facts to sustain such defense. That under the evidence in this case the said British Columbia Families Compensation Act does not apply to a cause of action arising out of a death occurring by reason of an accident happening seaward of low water, off shore of British Columbia, and the time limit of one year for bringing suit under that Act does not apply here. No other applicable law having been adequately

pleaded or proven, the law to be applied by this court to Count 1 of plaintiff's complaint is the law of the State of Washington relative thereto.

9. That the defendant has failed to sustain by preponderance of evidence in this case, facts necessary to support the allegations of their affirmative defenses as to Count I of the plaintiff's complaint. But on the contrary, the court finds that:

a. That defendant's said aircraft was in the sole and exclusive control of the defendant.

b. That defendant was performing services for the United States Government as an independent contractor and not as a mere agent of the United States Government.

c. That decedent John M. Waldrep did not assume the peril of any of the acts of negligence and misconduct of defendant set forth herein.

d. That defendant and its agents failed to take any and all necessary measures to avoid the damages to plaintiff.

e. That defendant failed to prove by the preponderance of the evidence any law other than the Wrongful Death Act of the State of Washington which would be applicable to this cause of action.

10. That decedent, J. M. Waldrep, although youthful, was devoted to his wife and their future child born only a few days after his death, and had a serious and definite intention to provide suitable and adequate support and care for them; that he had, while at home from public service, gone to school to better prepare for military service and other useful work and intended to complete his

schooling; that he had rapidly advanced in military rank to Sergeant First Class in the United States Army, his rating when his death occurred, receiving therefor base pay of grade "E-6" with extra overseas duty pay and other allowances, all amounting to more than \$300.00 monthly; that at the time of his death he was as usual in normal good health and expected to so continue permanently in the future with as good as and better earnings than he had received as Sergeant First Class; and

That the decedent father was and was likely to continue to be permanently in the future amply able to provide suitable, expensive and valuable support, care and education for his minor daughter, Judith Anne, throughout her minority; that she will need very substantial sums of money to meet the valuable education and training to which she was entitled from her father; that she is now an admirable little girl of about five years of age who at the time of her appearance in court during this trial convinced the Court that she is an intelligent child with an attractive personality and with bright prospects for future accomplishment, and the evidence is convincing that she is gifted, that generally she seems to be a child whose proper support, care and education will be of great value to her and would have been correspondingly expensive to her deceased father had he lived to provide it; that his obligation to provide for her such proper support, care and education is not made less valuable because of any existing danger of selfish or wasteful mismanagement by those likely to admin-

ister any money relief recovered for her benefit in this court.

12. That the value of the loss of support, and the loss of parental care, love and guidance sustained by decedent's daughter, Judith Anne Waldrep, by virtue of the death of the said decedent at the time of the birth of the said Judith Anne Waldrep was and is the sum of Forty Thousand Dollars (\$40,000.00).

From the foregoing Findings of Fact, the court makes the following

Conclusions of Law

1. That this court has jurisdiction of the subject matter and all parties involved in this proceeding.

2. That Geraldine B. Gorter is the duly qualified and acting administratrix of the estate of John M. Waldrep, deceased, and is entitled to bring this action according to the laws of the State of Washington.

3. That Judith Anne Waldrep is the sole lineal heir and beneficiary of the estate of John M. Waldrep according to the laws of the State of Washington.

4. Under the evidence produced in this case, the Wrongful Death Act of the State of Washington, Chapter 20, Title 4, R.C.W. Laws of the State of Washington *in* applicable to the above entitled action.

5. That according to the laws of the State of

Washington plaintiff is entitled to recover for the use and benefit of the decedent's said daughter, Judith Anne Waldrep, the value at the time of her birth of the loss of support and the loss of parental care, love and guidance which decedent would have provided her at the time of her birth.

6. That plaintiff is entitled to judgment, pursuant to Count 1 of plaintiff's complaint against the defendant in the sum of Forty Thousand Dollars (\$40,000.00), and for her costs and disbursements herein.

7. That in view of said conclusions, plaintiff recover nothing under Counts II and III of her complaint.

Done in Open Court this 15th day of May, 1957.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ JOHN W. RILEY,
Of Counsel,
Attorneys for Plaintiff.

Acknowledgment of Service Attached.

[Endorsed]: Filed May 15, 1957.

In the District Court of the United States, Western
District of Washington, Northern Division

Civil Cause No. 3695

GERALDINE B. GORTER, as Administratrix of
the Estate of John M. Waldrep, Deceased,
Plaintiff,

vs.

NORTHWEST AIRLINES, INC., Defendant.

JUDGMENT

Be it remembered, that this matter came on regularly for trial on the 21st day of March, 1957, before the undersigned Judge of the above entitled court and the cause being consolidated for trial with the case of H. D. Maynard vs. Northwest Airlines, Inc., Civil Cause No. 3872, and the plaintiff appearing by her attorneys, John W. Riley, and Williams & Kinneary, Ronald A. Murphy of counsel and the defendant appearing by its attorneys, Karr, Tuttle & Campbell, Carl G. Koch and Payne Karr of counsel, and the witnesses having been sworn and testimony and exhibits having been introduced, the court having considered the proofs offered and having heard argument of counsel and being fully advised in the facts and premises and having announced its oral decision at the conclusion of the trial, and having signed and entered its findings of fact and conclusions of law herein, now, therefore, it is

Ordered, Adjudged and Decreed that plaintiff have and recover and is hereby awarded judgment against the defendant, in the sum of Forty Thousand Dollars (\$40,000.00), and for her costs and disbursements herein.

Done in Open Court this 15th day of May, 1957.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ JOHN W. RILEY, of Counsel, Attorneys for
Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed May 15, 1957.

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action came on regularly for trial before the above-entitled Court, the Honorable John C. Bowen, Judge, on the 21st day of March, 1957. Plaintiff appeared by her attorneys, John W. Riley, and Williams & Kinnear, Ronald A. Murphy of counsel. Defendant appeared by its attorneys, Karr, Tuttle & Campbell, Carl G. Koch and Payne Karr of counsel.

On April 17, 1957, plaintiff and defendant each concluded their respective causes in chief, rebuttal and sur-rebuttal respectively, offering no further evidence.

The court having considered the records, files and pleadings, the exhibits and testimony of all the witnesses now makes the following

Findings of Fact

1. That the plaintiff, Geraldine Gorter, is the duly qualified and acting administratrix of the estate of the decedent, John M. Waldrep, and authorized to bring this action under and by virtue of the laws of the State of Washington.

2. That the decedent, John M. Waldrep, an American citizen, died on the 19th day of January, 1952, in the crash of an airplane leased by defendant Northwest Orient Airlines, Inc. from Trans World Airlines, Inc. and operated by defendant at a point in salt water more than a half mile out seaward from low water mark not within British Columbia, Dominion of Canada, but near Sandspit, British Columbia. At the time of the death of decedent he was survived by his wife, Faye Waldrep, an American citizen, who then bore decedent's child. Judith Anne Waldrep was born on January 22, 1952, and was and is the lawful issue of decedent and his marriage to the said Faye Waldrep. Prior to the commencement of this action and subsequent to the death of decedent, John M. Waldrep, the said Faye Waldrep died leaving the said minor child, Judith Anne Waldrep, an orphan in the care of relatives. The said minor child is the only surviving issue and dependant of the decedent, John M. Waldrep.

3. Defendant is a corporation organized and existing under and by virtue of the laws of Minne-

sota, doing business in the State of Washington, within the jurisdiction of this court. At the time of his death, the decedent, John M. Waldrep, was a passenger on said aircraft designated as "Flight 324" of defendant, Northwest Orient Airlines, Inc., of January 19, 1952. The said flight was being performed by employees of the defendant Northwest Orient Airlines, Inc. operating a Douglas DC-4 aircraft, serial number 45342. Decedent had boarded the defendant's said aircraft in Tokyo, Japan on January 17, 1952, enroute to McChord Air Force Base in Tacoma, Washington, via Shemya, Aleutian Islands, and Anchorage, Alaska.

4. On the morning of January 19, 1952, at a point approximately 75 miles southwest of Sitka, Alaska, the number 1 engine on said aircraft failed in flight after the said aircraft had departed Anchorage, Alaska, enroute to the Seattle, Washington area. The pilot of the said aircraft thereupon proceeded to Sandspit, British Columbia, which was a point approximately ... miles from the said place of engine failure, to attempt an emergency landing.

5. The death of decedent, John M. Waldrep, was, as alleged by plaintiff, the direct and proximate result of the crash of said aircraft, which was directly and proximately caused wrongfully and negligently by reason of acts of negligence, omissions and misconduct of the defendant.

6. That the defendant was guilty of wrongful omissions and misconduct and was negligent in the following respects and particulars, to-wit:

a. That the No. 1 engine on the aircraft on

which the decedent Waldrep was a passenger was negligently inspected and maintained by the defendant.

b. That the safety literature kept in the aircraft for distribution to passengers was inadequate and related to a configuration of aircraft different from the aircraft in use on the flight here in question.

c. That safety equipment different from that mentioned in the literature was in use upon this aircraft.

d. That such literature as was available for distribution to the passengers was not in fact distributed among them, nor as directed in the literature itself and in the defendant's corporate and business requirements.

e. That defendant negligently failed to distribute the literature to and among the passengers, including the decedent Waldrep.

f. That the defendant violated the Civil Aeronautics regulations and also the defendant's company regulations in that the defendant negligently did not consult with and advise the pilot in his preparation for landing following the loss and going out of commission of the No. 1 engine here in question.

g. That defendants pilot was negligent in first landing the aircraft too far down the runway at Sandspit, British Columbia, and then thereafter attempting to take the airplane off again into the air at a point on the airstrip when the plane had gone too far down towards the end of the airstrip to permit the gaining of necessary and proper flying airspeed and become again safely

airborne before the plane reached the far end of the airstrip.

h. That the life rafts in the aircraft were stowed aboard it in such a manner that they were inaccessible when emergently needed by the passengers in that they were stowed in places other than those designated, and as to which places the passengers were not informed; and, also, other lifesaving equipment in the airplane was placed at locations in the airplane not in conformity with the statements in such literature as was on the plane, and no other information was given or available to be given to the passengers as to the actual location of such other equipment.

i. That the defendant failed to effectuate any precautionary or safety procedure for emergency landing, despite the fact that the plane was operating on only three engines with impaired maneuverability, attempting to make a night landing on an airstrip unfamiliar to the pilot, which was snow-covered and was not suited for and was an unsafe landing place for use by this airplane.

j. That defendant and its pilot were further negligent in causing this crippled airplane to resume its flight and to depart from Anchorage, Alaska, which was the last airfield on which it was safely landed, in view of all the flying conditions surrounding it and of the history of its No. 1 engine's excessive oil consumption.

k. That the defendant was further negligent in failing to give to the passengers, including the decedent Waldrep, specific safety instructions and

related information much needed and more emergently needed after the plane crashed and came in contact with the sea water and after the plane lay partly submerged in the water.

1. That defendant failed to expedite rescue operations after the crash or to alert rescue facilities when informed that the said aircraft was in an emergency status after failure of its No. 1 engine.

7. That as an affirmative defense to the complaint of the plaintiff in Count I, the defendant has pleaded and proved sections 3 and 5 of the British Columbia wrongful death statute in effect January 19, 1952, entitled "The British Columbia Families' Compensation Act." That section 5 of said act provides that wrongful death actions must be commenced within one year from the date of death. That decedent Waldrep died January 19, 1952, and plaintiff's cause of action was not commenced until January 18, 1954. That nevertheless defendant has not sustained its said affirmative defense by a preponderance of the evidence in this case and accordingly the time limitation provision of the British Columbia Families' Compensation Act is not a bar to the maintenance of plaintiff's cause of action. That under the British Columbia law the British Columbia Families' Compensation Act does not apply to a cause of action for wrongful death caused by an accident occurring seaward of low water mark near Sandspit, British Columbia. No other wrongful death statute has been pleaded or proved by defendant. Plaintiff has alleged and proved the wrongful death statute of

the State of Washington contained in R.C.W. 4.20.

8. That the defendant has failed to sustain by preponderance of the evidence in this case, facts necessary to support the allegations of their other affirmative defenses as to Count I of the plaintiff's complaint. Particularly the court finds that:

a. That said aircraft was in the sole and exclusive control of the defendant.

b. That defendant was performing services for the United States Government as an independent contractor and not as a mere agent of the United States Government.

c. That decedent John M. Waldrep did not assume the peril of any of the acts of negligence and misconduct of defendant set forth herein.

d. That defendant and its agents failed to take all necessary measures to avoid the damages to plaintiff.

e. That under the evidence in this case there was not any law apart from the Wrongful Death Act of the State of Washington under which this cause of action could be maintained.

9. That decedent, J. M. Waldrep, although youthful, was devoted to his wife and their future child born only a few days after his death, and had a serious and definite intention to provide suitable and adequate support and care for them; that he had, while at home from public service, gone to school to better prepare for military service and other useful work and intended to complete his schooling; that he had rapidly advanced in

military rank to Sergeant First Class in the United States Army, his rating when his death occurred, receiving therefor base pay of grade "E-6" with extra overseas duty pay and other allowances, all amounting to more than \$300.00 monthly; that at the time of his death he was as usual in normal good health and expected to so continue permanently in the future with as good as and better earnings than he had received as Sergeant First Class; and

That the decedent father was and was likely to continue to be permanently in the future amply able to provide suitable, expensive and valuable support, care and education for his minor daughter, Judith Anne, throughout her minority; that she will need very substantial sums of money to meet the valuable education and training to which she was entitled from her father; that she is now an admirable little girl of about five years of age who at the time of her appearance in court during this trial convinced the Court that she is an intelligent child with an attractive personality and with bright prospects for future accomplishment, and the evidence is convincing that she is gifted, that generally she seems to be a child whose proper support, care and education will be of great value to her and would have been correspondingly expensive to her deceased father had he lived to provide it; that his obligation to provide for her such proper support, care and education is not made less valuable because of any existing danger or selfish or wasteful mismanagement by those likely

to administer any money relief recovered for her benefit in this court.

10. That the value of the loss of support, and the loss of parental care, love and guidance sustained by decedent's daughter, Judith Anne Waldrep, by virtue of the death of the said decedent at the time of the birth of the said Judith Anne Waldrep was and is the sum of Forty Thousand Dollars (\$40,000.00).

11. That the facts necessary to make the Warsaw Convention applicable to said Flight 324, on which decedent Waldrep was a passenger, or to entitle plaintiff to maintain an action based upon the contract between defendant and the United States Government have not been proved by a preponderance of the evidence.

From the foregoing Findings of Fact, the Court makes the following

Conclusions of Law

1. That this court has jurisdiction of the subject matter and all parties involved in this proceeding.

2. That Geraldine B. Gorter is the duly qualified and acting administratrix of the estate of John M. Waldrep, deceased, and is entitled to bring this action according to the laws of the State of Washington.

3. That Judith Anne Waldrep is the sole lineal heir and beneficiary of the estate of John M. Waldrep according to the laws of the State of Washington.

4. That the Wrongful Death Act of the State

of Washington, Chapter 20, Title 4, R.C.W. Laws of the State of Washington is applicable to the above-entitled action.

5. That according to the laws of the State of Washington plaintiff is entitled to recover for the use and benefit of the decedent's said daughter, Judith Anne Waldrep, the value at the time of her birth of the loss of support and the loss of parental care, love and guidance which decedent would have provided her at the time of her birth.

6. That plaintiff is entitled to judgment, pursuant to Count 1 of plaintiff's complaint against the defendant in the sum of Forty Thousand Dollars (\$40,000.00), and for her costs and disbursements herein.

7. That plaintiff is entitled to recover nothing under Counts II and III of her complaint.

Done in Open Court this day of May, 1957.

.....,

Judge

The Court respectfully declines to make or enter the foregoing requested Findings and Conclusions to the extent that they are different from those other ones this day made and entered herein.

May 15, 1957.

/s/ JOHN C. BOWEN,

Judge

Acknowledgment of Service attached.

[Endorsed]: Filed May 15, 1957.

[Title of District Court and Cause.]

COST BILL

Disbursements

I. Clerk's Fees

Roberta Lucas, County Clerk, Walla Walla County, copies of Letters of Administration: Amount claimed, \$3.00; amount allowed, \$3.00.

Filing Complaint and Summons: Amount claimed, \$15.00; amount allowed, \$15.00.

II. Attorney's Fees

Attorney's Docket fees: Trial: Amount claimed, \$20.00; amount allowed, \$20.00.

Depositions admitted in evidence: (a) Donald A. Baker: Amount claimed, \$2:50; disallowed. (b) LeRoy Waldrep: Amount claimed, \$2.50; disallowed.

III. Deposition Costs

Mr. Orin E. Gray, Court Reporter, Deposition of Donald E. Baker, December 8, continued to December 12, 1956: Amount claimed, \$90.20; amount allowed, \$40.20.

Bernice Youngblood, Court Reporter, Deposition of LeRoy Waldrep, Jasper, Alabama, March 1, 1957: Amount claimed, \$51.00; amount allowed, \$40.00.

IV. Witness Fees and Mileage

Mrs. Fern Bloth, address, Alamagordo, New Mexico, mileage 200: Amount claimed, \$16.00; amount allowed, \$16.00. One day's attendance, two days enroute: Amount claimed \$12.00; amount al-

lowed, \$12.00. Subsistence: Amount claimed \$15.00; amount allowed, \$15.00.

Mr. Robert Lewis, address, Seattle, Washington, one day's attendance: Amount claimed \$4.00; disallowed.

Mr. Charles E. Smith, address, Seattle, Washington, one day's attendance: Amount claimed, \$4.00; disallowed. Mileage 8: amount claimed, \$.64; disallowed.

Witness fee, on Subpoena Duces Tecum, to Northwest Airlines, address, Seattle, Washington, one day's attendance: Amount claimed, \$4.00; disallowed; mileage 8: Amount claimed, \$.64; disallowed.

John R. Cunningham, address, Vancouver, British Columbia, Canada, two day's attendance: Amount claimed, \$8.00; amount allowed, \$8.00. Subsistence: Amount claimed, \$10.00; amount allowed, \$8.00. Transportation, first class Airlines, 220 miles at 8c per mile: Amount claimed, \$18.81; amount allowed, \$17.60.

V. Miscellaneous

Transcripts necessarily obtained for use George F. Cropp, excerpt of proceedings: Amount claimed, \$28.78; disallowed.

Patricia Stewart, extract of testimony on Court's decision: Amount claimed \$8.25; disallowed.

George F. Cropp, transcript of proceedings: Amount claimed, \$9.60; disallowed.

Fees for obtaining photographs necessary for

use: Photographs of DC-4 type airplane: Amount claimed, \$10.00; disallowed.

Fees for exemplification and copies of papers necessarily obtained for use in case: Photostats of Northwest Airlines records for exhibits in evidence: Amount claimed, \$48.40; disallowed.

Total: Amount claimed, \$382.32; amount allowed, \$194.80.

Taxed May 20, 1957.

/s/ MILLARD P. THOMAS,
Clerk

United States of America,
Western District of Washington—ss.

Ronald A. Murphy, being duly sworn, deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

/s/ RONALD A. MURPHY

Subscribed and sworn to before me this 16th day of May, 1957.

[Seal] /s/ MORELL E. SHARP,
Notary Public in for the State of Washington,
residing at Seattle.

To: Karr, Tuttle and Campbell, Attorneys for Defendant Northwest Airlines, Inc.

You will please take notice that on Monday, the 20th day of May, 1957, at the hour of 11:00 o'clock a.m., application will be made to the Clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

WILLIAMS & KINNEAR,
/s/ RONALD A. MURPHY,
Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed May 16, 1957.

[Title of District Court and Cause.]

**MOTION FOR NEW TRIAL; MOTION TO RE-
OPEN FOR FURTHER EVIDENCE; MO-
TION FOR LEAVE TO AMEND DEFEND-
ANT'S ANSWER**

Defendant respectfully moves the Court for an order granting a new trial in the above-entitled cause upon the following grounds:

1. Surprise which ordinary prudence could not have guarded against;
2. Excessive damages appearing to have been given under the influence of passion or prejudice;
3. Insufficiency of the evidence to justify the Court's findings; and
4. Error in law occurring at the trial consisting

of the Court's refusal to permit Mr. John Bird, one of defendant's witnesses, to testify that the British Columbia Families' Compensation Act was the sole and exclusive law under which an action by plaintiff could have been predicated, and that there was no other law applicable creating a cause of action for wrongful death.

Defendant renews its motion to re-open for further evidence of the law applicable to the facts of this case and its motion for leave to amend defendant's answer, which motions are on file herein.

These motions are made and based upon the pleadings and all other records and files herein, the minutes of the Court, and the affidavit of Carl G. Koch made in connection with defendant's previous motion for leave to amend defendant's answer, and motion to re-open for further evidence, which affidavit is on file herein.

KARR, TUTTLE & CAMPBELL,
/s/ CARL G. KOCH,

Attorneys for Defendant.

Acknowledgment of Service attached.

[Endorsed]: Filed May 20, 1957.

[Title of District Court and Cause.]

ORDER DENYING DEFENDANT'S MOTION
FOR NEW TRIAL, DEFENDANT'S MO-
TION TO AMEND ANSWER AND DE-
FENDANT'S MOTION TO RE-OPEN

Hearings on defendant's Motion for New Trial, Motion to Amend Answer and Motion to Re-Open came on regularly for hearing before the undersigned Judge of the above entitled court. Defendant appeared by its counsel, Karr, Tuttle & Campbell, Carl Koch and Coleman Hall of counsel plaintiff appeared by her attorneys, Williams & Kinnear, Ronald A. Murphy of counsel and John W. Riley.

Findings of Fact and Conclusions of Law and Judgment in the above entitled cause having been entered heretofore and having considered defendant's said motions filed herein and affidavits in support thereof; having considered arguments of all counsel desiring to be heard and being fully advised,

It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That defendant's motion for leave to amend its answer shall be and hereby is Denied:
2. That defendant's motion for leave to re-open shall be and hereby is Denied: and
3. That defendant's motion for a new trial,

shall be and hereby is Denied as to each and all of the grounds set forth therein.

Done in Open Court this 20th day of May, 1957.

/s/ JOHN C. BOWEN,
Judge.

Presented and Approved for entry:

/s/ JOHN W. RILEY, for Plaintiff.

Approved as to Form:

Karr, Tuttle & Campbell. By Carl G. Koch,
Attorneys for Defendant.

[Endorsed]: Filed May 20, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is Hereby Given that Northwest Orient Airlines, Inc., a corporation, defendant above named, hereby appeals to the United States Court of Appeals, Ninth Circuit, from the final Judgment entered in this action on May 15, 1957.

Dated this 22nd day of May, 1957.

/s/ CARL G. KOCH,

KARR, TUTTLE & CAMPBELL,
Attorneys for Defendant.

[Endorsed]: Filed May 22, 1957.

[Title of District Court and Cause.]

SUPERSEDEAS AND COST BOND ON
APPEAL

Know All Men by These Presents:

That we, Northwest Orient Airlines, Inc., a corporation organized and existing under and by virtue of the laws of the State of Minnesota, as principal and Federal Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and duly authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto Geraldine B. Gorter, as Administratrix of the Estate of John M. Waldrep, Deceased, the plaintiff above named, in the just and full sum of Fifty Thousand and no/100 Dollars (\$50,000.00), for which sum well and truly to be paid we bind ourselves and our respective successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the above-named plaintiff on the 15th day of May, 1957, in the above-entitled action and court, recovered judgment against the defendant in the sum of \$40,000.00, together with her costs and disbursements taxable herein, and

Whereas the above-named principal has heretofore given due and proper notice that it appeals from said decision and judgment of said United States District Court.

Now, Therefore, if the principal, Northwest Orient Airlines, Inc., shall pay to Geraldine B.

Gorter, as Administratrix of the Estate of John M. Waldrep, Deceased, the plaintiff above named, all costs and damages that may be awarded against the said principal on appeal or dismissal thereof, and shall satisfy the judgment appealed from in full, together with costs and interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and shall satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof we have hereunto subscribed our names and affixed our seals this 22nd day of May, 1957.

NORTHWEST ORIENT AIRLINES,
INC.,

/s/ By CARL G. KOCH,
Its Attorney.

[Seal] FEDERAL INSURANCE COMPANY,

/s/ By WILLIAM S. BUCKNALL,
Its Attorney in Fact and Resident
Agent.

Approved this 22nd day of May, 1957 as to form
and amount.

WILLIAMS & KINNEAR,
JOHN W. RILEY,

/s/ By RONALD A. MURPHY,
Attorneys for Plaintiff.

Approved this 22nd day of May, 1957.

/s/ JOHN C. BOWEN,
Judge.

[Endorsed]: Filed May 22, 1957.

[Title of District Court and Cause.]

AMENDED NOTICE OF APPEAL

Notice Is Hereby Given that Northwest Orient Airlines, Inc., a corporation, defendant above named, hereby appeals to the United States Court of Appeals, Ninth District, from the final Judgment entered in this action on May 15, 1957, and from the Order Denying Defendant's Motion for a New Trial, Denying Defendant's Motion to Amend Its Answer and Denying Defendant's Motion to Re-Open for Further Testimony entered May 20, 1957.

Dated this 28th day of May, 1957.

/s/ CARL G. KOCH,
KARR, TUTTLE & CAMPBELL,
Attorneys for Defendant.

[Endorsed]: Filed May 31, 1957.

[Title of District Court and Cause.]

STIPULATION AS TO PORTION OF PROCEEDINGS AND EVIDENCE NOT MATERIAL TO ISSUES ON APPEAL

Attached is Statement of Points on Which Appellant Intends to Rely on Appeal, prepared pursuant to the provisions of Rule 75 of the Rules of Civil Procedure, which appellant will file in the above captioned cause in accordance with said Rule

75 provided the following stipulation is entered into by and between counsel for appellant and appellee:

It Is Hereby Stipulated that the evidence and testimony of the following witnesses are not material or relevant to the issues on appeal as specified in the concise statement of points upon which appellant intends to rely on appeal, and that said evidence and testimony shall not be designated by appellant or appellee to be included in the portions of the records, proceedings and evidence to be contained in the record on appeal: Dr. A. H. Seering, Dr. Alfred Sheridan, Dr. Paul Ruuska, and (by deposition) Earle Conwell.

It Is Further Stipulated that, except for the evidence and testimony of the witnesses specifically excluded by the foregoing paragraph, appellant shall designate all the rest and remainder of the reporter's transcript of the evidence or proceedings in the above captioned cause.

It is understood and agreed that, with the exception of the deposition of Earle Conwell which shall not be designated by appellant or appellee to be contained in the record on appeal, this stipulation relates only to the reporter's transcript of the evidence and proceedings in the above captioned cause, and this stipulation does not cover or relate to the portions of the record contained in the original file in this cause in the office of the Clerk of the above captioned Court, nor to the exhibits introduced during the trial of said cause.

Dated this 31st day of May, 1957.

/s/ CARL G. KOCH,
KARR, TUTTLE & CAMPBELL,
Attorneys for Northwest Airlines, Inc., Defendant-
Appellant.

WILLIAMS & KINNEAR,
JOHN W. RILEY,

/s/ By RONALD A. MURPHY,
Attorneys for Geraldine B. Gorter, Administratrix
of the Estate of John W. Waldrep, Deceased,
Plaintiff-Appellee.

[Endorsed]: Filed June 12, 1957.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL

Defendant hereby makes this statement of points on which it, as appellant, intends to rely on the appeal of this case:

1. That the trial court erred in making the following portion of Finding of Fact No. 2:

“That the decedent, John M. Waldrep, an American citizen died on the 19th day of January, 1952, in the crash of an airplane operated by defendant at a point in salt water more than a half mile out seaward from low water

mark and off shore of Sandspit, British Columbia, Dominion of Canada.”

That said Finding is unsupported by the evidence before the court. The court should have found from the evidence that the decedent, John M. Waldrep, was a passenger on the airplane operated by defendant and that said airplane crashed in salt water at a point landward from low water mark and in the jurisdiction of British Columbia, Dominion of Canada.

2. That the trial court erred in making Finding of Fact No. 8. That the trial court should have found from the evidence that the pertinent sections of the British Columbia Families' Compensation Act were pleaded and proved and that said Act was the only law affording a cause of action for wrongful death of an airplane passenger resulting from the crash of an airplane into the water in British Columbia, Canada; that said Act was applicable and in full force and effect at the time and place where decedent Waldrep died; that the one year limitation of action provided for in Section 5 of said Act is a bar to plaintiff's cause of action; that even if said crash occurred seaward of low water mark, there was no applicable law of British Columbia or Canada under which plaintiff's cause of action to recover damages for the wrongful death of the decedent Waldrep could have been maintained; that defendant has sustained by a preponderance of the evidence its 12th affirmative defense; that the wrongful death statute of the State of Washington

has no application and does not control or govern the rights of the parties in this cause.

3. That the trial court erred in making the following portion of Finding of Fact No. 9 which the evidence before the court does not support:

“9. That the defendant has failed to sustain by preponderance of evidence in this case, facts necessary to support the allegations of their other affirmative defenses as to Count I of the plaintiff’s complaint. But on the contrary, the court finds that:

“* * * * *

“e. That defendant failed to proved by the preponderance of the evidence any law other than the Wrongful Death Act of the State of Washington which would be applicable to this cause of action.”

Instead of said finding, the trial court should have found that defendant sustained by a preponderance of evidence facts necessary to support the allegations of its 12th affirmative defense based upon the one year statute of limitations contained in Section 5 of the British Columbia Families’ Compensation Act pleaded by defendant; that defendant pleaded and proved the pertinent provisions of the British Columbia Families’ Compensation Act and has proved that said Act is the only law applicable to the facts of this case.

4. That the trial court erred in making Finding of Fact No. 10 which the evidence before the court does not support. That the court should have found that the deceased Waldrep completed the tenth

grade in school only, was unskilled, and from age sixteen spent nearly all of his time in military service. That at the time of his death he was a buck sergeant, pay grade "E-4", in the United States Army. That it could be reasonable expected that the deceased Waldrep would support his dependents to the extent that his means permitted. That Judith Ann Waldrep is a normal five-year-old girl of average intelligence.

5. That the trial court erred in making Finding of Fact No. 12 which the evidence before the court does not support. That the sum of \$40,000.00 is excessive.

6. That the trial court erred in making Conclusion of Law No. 4 which the evidence and facts do not support. The trial court should have concluded that the Wrongful Death Act of the State of Washington was not applicable under the facts as found by the court or as claimed by the defendant. That thereunder plaintiff cannot maintain an action to recover damages for the death of Waldrep.

7. That the trial court erred in making Conclusion of Law No. 5 which the evidence and facts do not support. That the trial court should have concluded that plaintiff is not entitled to recover under the laws of the State of Washington.

8. That the trial court erred in making Conclusion of Law No. 6 which the evidence and facts do not support. That the trial court should have concluded that plaintiff was not entitled to judgment in any sum.

9. That the trial court erred in entering judg-

ment for plaintiff. That the trial court should have entered judgment dismissing plaintiff's complaint with prejudice and should have awarded defendant its taxable costs and disbursements incurred.

10. That the trial court erred in sustaining plaintiff's objection to the testimony of witness John Bird which defendant sought to introduce for the purpose of proving that there was no law applicable to the facts of this case, other than the British Columbia Families' Compensation Act, under which plaintiff could maintain a cause of action or recover for the wrongful death of decedent Waldrep.

11. That the trial court erred in permitted plaintiff to introduce over defendant's objection evidence that the accident did not happen in British Columbia, and in permitting plaintiff's witness J. R. Cunningham to answer, over defendant's objection, questions posed by plaintiff's counsel, the answers to which depended on whether the accident happened within or outside of British Columbia.

12. That the court erred in entering its order May 20, 1957, denying defendant's Motion for New Trial, Motion to Re-Open and Motion to Amend Defendant's Answer.

Dated this 29th day of May, 1957.

/s/ CARL G. KOCH,
KARR, TUTTLE & CAMPBELL,
Attorneys for Defendant.

Acknowledgment of Service Attached.

[Endorsed]: Filed June 12, 1957.

[Letterhead of Karr, Tuttle & Campbell]

(Copy)

Williams & Kinnear
Attorneys at Law,
3314 White Building,
Seattle, Washington

May 23, 1957

Attention: Mr. Ronald A. Murphy
Re: Appeal of Gorter v. Northwest Airlines, Inc.
Gentlemen:

As we have previously advised you, the only issues of fact we intend to raise on appeal are those relating to where the accident occurred and the excessiveness of the damages awarded plaintiff. On that account, we deem it appropriate to proceed under Rule 75 of the Rules of Civil Procedure to designate only a portion of the records, proceedings and evidence to be contained in the record on appeal, and to accompany such designation with a concise statement of the points of reliance on appeal. Section e of Rule 75 states that all matters not essential to the decision of the questions presented by the appeal shall be omitted. With this caution in mind and as we have explained to you and Mr. Riley on two previous occasions, we have met with Mr. Cropp and Miss Stewart on two occasions to ferret out the testimony having a bearing upon the issues on appeal. We recognize that portions of the testimony of Messrs. Maynard, Matthews, Sanders, Cox and Leonard do have a bearing. We further intended to designate all of the testimony of Messrs. Kildahl, Bird and Cunningham.

We are now advised that Miss Stewart, who reported the proceedings in court from April 9 through April 17, plans to leave Seattle June 14 and take up residence in Panama commencing July 1, 1957. We were afraid that time would not permit her to designate the portions of the testimony of Messrs. Matthews, Cox, Sanders and Leonard in time to serve it upon you, allow you ten days to designate additional portions of the record, and have that transcribed prior to June 14. On that account, we now propose to furnish all of the testimony of Messrs. Maynard, Matthews, Sanders, Cox, Leonard, Kildahl, Cunningham and Bird, and at a subsequent time in accordance with Rule 18 of the Rules of the U. S. Circuit Court of Appeals for the Ninth Circuit, the portions of the testimony of these witnesses which are immaterial and irrelevant on the issues before the court on appeal can be excluded from the portion of the record to be printed.

We request that you enter into a stipulation with us by which it is mutually acknowledged that the testimony of the following witnesses are not material or relevant to the issues on appeal as specified in the concise statement of points upon which appellant intends to rely on appeal, a copy of which is attached and will be filed with the U. S. District Court for the Western District of Washington, Northern Division, if this stipulation is entered into. The witnesses whose testimony would be excluded under this stipulation are: Alfred T. Peterson, E. K. Pitcher, Alvin Opsahl, Dr. A. H. Seer-

ing, Dr. Alfred Sheridan, C. E. Smith, Robert M. Lewis, Frank Kavanaugh, Wilbur Hewitt, Lawrence Thompson, Gerald F. Whittle, and Gene R. Kingston, Dr. Paul Ruuska, and Earle Conwell (by deposition).

This stipulation is limited to the witnesses' testimony. Further stipulations will be proposed within the next few days relating to the elimination of immaterial and irrelevant exhibits and records contained in the original file in this case in the office of the Clerk of the District Court.

The procedure proposed in this letter is that suggested by the Ninth Circuit Court of Appeals in *Watson v. Button* (CCA 9 1956) 235 F. (2d) 235. Where the appellee is unwilling to stipulate to the elimination of immaterial and irrelevant portions of the record and thus forces appellant to bring the entire record to the appellate court, the court may tax the costs of such on appellee even though the decision is affirmed on appeal.

Very truly yours,

KARR, TUTTLE & CAMPBELL,

/s/ By CARL G. KOCH.

CGK:pj

Enc: 2cc Stipulation

2cc Statement of Points

[Endorsed]: Filed June 12, 1957.

[Letterhead of Williams & Kinnear]

Mr. Carl G. Koch

May 27, 1957

Karr, Tuttle and Campbell

1411 Fourth Avenue Building

Seattle 1, Washington

Re: Appeal of Gorter v. Northwest Airlines, Inc.

Gentlemen:

As we have previously advised you, it is agreeable with us that the testimony of Doctors A. H. Seering, Alfred Sheridan, Gene R. Kingston, Paul Ruuska and Earle Conwell do not involve matters essential to the discharge of the questions presented by defendant in its "Statement of Points on which Appellant Intends to Rely on Appeal" and may be omitted therein.

Very truly yours,

WILLIAMS & KINNEAR,
JOHN W. RILEY,

/s/ RONALD A. MURPHY.

RAM/c

cc. Mr. John W. Riley

[Endorsed]: Filed June 12, 1957.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND DOCKETING
THE APPEAL

This matter having duly and regularly come on

for hearing before the undersigned Judge of the above-entitled Court upon the motion of defendant for an order extending the time for filing the record on appeal in the above-entitled matter and docketing the appeal, it appearing to the Court that said motion is timely made in accordance with Rule 73 (g), Federal Rules of Civil Procedure, and the Court being fully advised, now, therefore,

It is hereby ordered that the time for filing the record on appeal and docketing the appeal herein be and the same hereby is extended to and including August 19, 1957.

Done in Open Court this 12th day of June, 1957.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ COLEMAN P. HALL
Of Kaar, Tuttle & Campbell,
Attorneys for Defendant.

Approved by:

/s/ RONALD A. MURPHY
Of Williams & Kinnear and
John W. Riley,
Attorneys for Plaintiff.

[Endorsed]: Filed June 12, 1957.

[Title of District Court and Cause.]

ORDER DIRECTING TRANSMISSION OF ORIGINAL EXHIBITS

This matter having duly and regularly come on

for hearing before the undersigned Judge of the above-entitled Court upon the application of defendant for an Order directing transmission of all original exhibits admitted into evidence in the above cause to the United States Court of Appeals for the Ninth Circuit as part of the record on appeal in said cause, and it appearing to the Court that defendant has filed its designation of contents of records on appeal designating for inclusion in said record all of said exhibits, now, therefore,

It Is Hereby Ordered that the Clerk of the above-entitled Court be, and he hereby is, directed to transmit to the United States Court of Appeals for the Ninth Circuit, as part of the record on appeal in the above-entitled cause, all of the original exhibits admitted in evidence in said cause.

Done in Open Court this 12th day of June, 1957.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ COLEMAN P. HALL
Of Karr, Tuttle & Campbell,
Attorneys for Defendant.

Approved:

/s/ RONALD A. MURPHY
Of Williams & Kinnear and
John W. Riley,
Attorneys for Plaintiff.

[Endorsed]: Filed June 12, 1957.

[Title of District Court and Cause.]

STIPULATION AS TO PORTION OF PROCEEDINGS AND EVIDENCE NOT MATERIAL TO ISSUES ON APPEAL

Attached is Statement of Points on Which Appellant Intends to Rely on Appeal, prepared pursuant to the provisions of Rule 75 of the Rules of Civil Procedure, which appellant will file in the above captioned cause in accordance with said Rule 75 provided the following stipulation is entered into by and between counsel for appellant and appellee:

It Is Hereby Stipulated that the evidence and testimony of the following witnesses are not material or relevant to the issues on appeal as specified in the concise statement of points upon which appellant intends to rely on appeal, and that said evidence and testimony shall not be designated by appellant or appellee to be included in the portions of the records, proceedings and evidence to be contained in the record on appeal: Alfred T. Peterson, E. K. Pitcher, Alvin Opsahl, Dr. A. H. Seering, Dr. Alfred Sheridan, C. E. Smith, Robert M. Lewis, Frank Kavanaugh, Wilbur Hewitt, Lawrence Thompson, Gerald F. Whittle, Gene R. Kingston, Dr. Paul Ruuska, and Earle Conwell.

It Is Further Stipulated that, except for the evidence and testimony of the witnesses specifically excluded by the foregoing paragraph, appellant shall designate all the rest and remainder of the reporter's transcript of the evidence or proceedings in the above captioned cause.

It is understood and agreed that, with the exception of the deposition of Earle Conwell which shall not be designated by appellant or appellee to be contained in the record on appeal, this stipulation relates only to the reporter's transcript of the evidence and proceedings in the above captioned cause, and this stipulation does not cover or relate to the portions of the record contained in the original file in this cause in the office of the Clerk of the above captioned Court, nor to the exhibits introduced during the trial of said cause.

Dated this day of May, 1957.

KARR, TUTTLE & CAMPBELL,
Attorneys for Northwest Airlines, Inc., Defendant-
Appellant.

.....
Attorneys for Geraldine B. Gorter, Administratrix
of the Estate of John W. Waldrep, Deceased,
Plaintiff-Appellee.

[Endorsed]: Filed July 16, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit and

Rule 75(o) FRCP I am transmitting herewith the following original documents in the file dealing with the above action, including admitted exhibits, as the record on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers and documents being identified as follows:

1. Complaint, filed Jan. 18, 1954.
2. Summons with Marshal's return thereon, filed Jan. 21, 1954.
7. Motion to Dismiss Complaint for Failure to State a Claim, filed Feb. 9-54.
9. Order Changing Venue (Certified copy), filed 4-22-54.
11. Appearance of Ryan, Askren & Mathewson for Plaintiff, filed 4-19-55.
13. Memorandum of Authorities in Opposition to Defendant's Motion to Dismiss, filed April 22, 1955.
14. Plaintiff's Memorandum Regards Motion to Dismiss Count Two for Lack of Jurisdiction Over the Subject Matter, filed Apr. 22, 1955.
18. Order Overruling Motion to Dismiss and Quash, filed May 23, 1955.
23. Answer of Defendant, filed Dec. 30, 1955.
24. Notice of Substitution of Attorneys, filed Apr. 18, 1956.
25. Withdrawal of Attorneys Tuttle & Luce, filed May 1, 1956.
26. Withdrawal of Attorneys Fowler, Leav, Hawes & Symington, filed 5-1-56.

28. Motion for Order for Production of Documents, filed Aug. 29, 1956.

29. Affidavit in Support of Plaintiff's Motion for Order for Discovery and Inspection of Documents Under Rule 34, filed Aug. 29, 1956.

32. Request for Admissions of Fact, filed by Plaintiff Aug. 31, 1956.

37. Answer to Plaintiff's Request for Admissions of Fact, filed 9-24-56.

38. Order on Plaintiff's Motion for Production of Documents, filed 9-25-56.

40. Order of Continuance and Consolidation, filed Oct. 4, 1956.

47. Notice of Appearance of Associate Counsel, filed Feb. 12, 1957, (Williams & Kinnear).

62. Motion Defendant for Leave to Amend Paragraph IX of Answer, filed 2-20-57, with supporting affidavit of Coleman P. Hall attached.

66. Ptff's Memo. Contra Motion of Deft. to Amend Answer, filed 2-25-57.

67. Affidavit of John W. Riley Contra Motion for Leave to Amend Answer, filed Feb. 25, 1957.

68. Amendment to Paragraph IX of Defendant's Answer, filed 2-25-57.

73. Motion for Leave to Amend Complaint, filed March 5, 1957.

74. Proposed Amendment of Plaintiff's Complaint, filed 3-5-57.

95. Stipulation re submission of certain documents in evidence, filed 3-18-57.

96. Pre-trial Order, filed Mar. 18, 1957.

99. Motion Defendant to Quash Subpoenas, filed Mar. 21, 1957.

102. Affidavit Contra Plaintiff's Motion to Quash Subpoenas and Motion to Strike Defendant's Answer, etc., filed Mar. 22, 1957.

107. Trial Amendment of Complaint, filed Mar. 26, 1957.

110a. Additional Affidavit in Support of Plaintiff's Motion to Strike Defendant's Answer, Impose Costs, etc., filed Apr. 11, 1957.

112. Memorandum of Authorities on Willful Misconduct, filed 4-17-57.

113. Memorandum of Law Relative to Damages, filed Apr. 17, 1957.

114. Memorandum of Authorities on Pleading, filed Apr. 17, 1957.

115. Memorandum on Damages Sustained and Awardable to the Estate of Sgt. J. M. Waldrep, filed April 17, 1957.

116. Plaintiff's Memorandum on Final Argument, filed Apr. 17, 1957.

119. Memorandum of Authorities on Presumption of Foreign Law, filed 4-17-57.

120. Motion deft. to Amend Defendant's Answer, Motion to Reopen for Further Evidence, filed May 14, 1957.

121. Notice of Presentation, filed May 14, 1957. Amendment to Answer and Affirmative Defense, lodged May 14, 1957.

122. Court Reporter's Transcript of Oral Decision of Court, filed 5-15-57.

123. Findings of Fact and Conclusions of Law, filed May 15, 1957.

124. Judgment filed May 15, 1957.

125. Findings of Fact and Conclusions of Law Proposed by Defendant, and refused by the Court, filed May 15, 1957.

126. Cost Bill, filed May 16, 1957, as taxed.

127. Motion for New Trial, Motion to Re-open for Further Evidence; Motion to Amend Defendant's Answer, filed May 20, 1957.

128. Order Denying Defendant's Motion for New Trial, etc., filed 5-20-57.

129. Notice of Appeal, filed May 22, 1957.

130. Supersedeas and Cost Bond on Appeal, filed May 22, 1957.

131. Amended Notice of Appeal, filed May 31, 1957.

132. Stipulation as to Portion of Proceedings and Evidence Not Material to Issues on Appeal, filed June 12, 1957.

133. Statement of Points on Which Appellant Intends to Rely, filed June 12, 1957.

134. Appellant's Designation of Portions of Record, Proceedings and Evidence, filed June 12, 1957.

135. Letter, Karr, Tuttle & Campbell dated 5-23-57, to Williams & Kinnear, filed June 12, 1957.

136. Letter, Williams & Kinnear and John W. Riley to Karr, Tuttle and Campbell, dated May 27, 1957, and filed June 12, 1957.

138. Order Extending Time for Docketing Record on Appeal to August 19, 1957, filed June 12, 1957.

140. Order Directing Transmission of Original Exhibits, filed 6-12-57.

141. Appellee's Designation of Additional Portions of Record, filed 6-21-57.

142. Stipulation as to Portion of Proceedings and Evidence Not Material to Issues on Appeal, filed July 16, 1957.

143. Appellant's Additional Designation of Portions of Record, Proceedings and Evidence, filed July 16, 1957.

144-147. Court Reporter's Transcript of testimony and proceedings (4 volumes), filed August 13, 1957.

Plaintiff's Exhibits numbered 6 to 9 incl.; 12 to 18 incl.; 20 to 25 incl.; 27, 29, 30, 31, 33, 35, 36, 38, and

Defendant's Exhibits numbered A-3, A-5, A-15 to A-26 incl.; A-29 to A-35 incl.; A-41, A-42 and A-43.

I *further that* the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to-wit:

Filing fee, Notice of Appeal, \$5.00; and that said amount has been paid to me by counsel for appellant.

Witness my hand and official seal at Seattle this 13th day of August, 1957.

[Seal] MILLARD P. THOMAS,

Clerk,

/s/ By TRUMAN EGGER,

Chief Deputy.

[Title of District Court and Cause.]

SUPPLEMENTAL CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss:

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting herewith, supplemental to the record on appeal in the above cause, the following additional papers or documents dealing with the action, to-wit:

76. Deposition of Lee Roy Waldrep on behalf of plaintiff, filed March 6, 1957.

83a. Deposition of Donald E. Baker on behalf of plaintiff, Volume 1, filed March 11, 1957.

83b. Deposition of Donald E. Baker on behalf of plaintiff, Volume 2, filed March 11, 1957.

84. Deposition of H. B. Maynard on behalf of defendant, filed March 11, 1957.

89. Deposition of Richard Pontius Fields on behalf of defendant, filed March 12, 1957.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 19th day of August, 1957.

[Seal] MILLARD P. THOMAS,
 Clerk,

/s/ By TRUMAN EGGER,
 Chief Deputy.

In the District Court of the United States, Western
District of Washington, Northern Division

No. 3695

GERALDINE B. GORTER, Administratrix of the
Estate of John M. Waldrep, Deceased,
Plaintiff,

vs.

NORTHWEST ORIENT AIRLINES, a Minne-
sota corporation, Defendant.

No. 3872

H. D. MAYNARD, Plaintiff,

vs.

NORTHWEST ORIENT AIRLINES, a Minne-
sota corporation, Defendant.

TRANSCRIPT OF PROCEEDINGS

Be It Remembered, that the above-entitled and numbered causes were consolidated for trial and heard before the Honorable John C. Bowen, one of the Judges of the above-entitled Court, beginning Monday, March 25, 1957, at 2:15 o'clock p.m.

The plaintiffs were represented by Messrs. John W. Riley, Ronald A. Murphy and Morell E. Sharp, Attorneys at Law. [1]*

* Page numbers appearing at bottom of page of Reporter's Original Transcript of Record.

The defendant was represented by Messrs. Payne Karr and Carl G. Koch, of Messrs. Karr, Tuttle & Campbell, Attorneys at Law.

(Whereupon, the following proceedings were had and done, to-wit:)

The Court: Are Counsel and the parties ready to proceed in the case of Geraldine B. Gorter, Administratrix of the estate of John M. Waldrep, deceased, against Northwest Orient Airlines, a Minnesota corporation, No. 3695, together with the case of H. D. Maynard against the same defendant, being numbered 3872, consolidated for trial?

Mr. Riley: The plaintiffs Gorter and Maynard are ready to proceed, your Honor.

Mr. Koch: Your Honor, the defendant is ready to proceed, but there is a preliminary motion to be passed upon.

The Court: Very well. What is the motion?

Mr. Koch: It is a motion to quash the subpoenas duces tecum served upon certain individuals in the employ of defendant and possibly unto the defendant, too.

(The Court heard oral argument by [2] Mr. Koch and Mr. Riley.)

The Court: Now I want to proceed with this trial. This matter is continued until tomorrow morning at the beginning of the trial session without prejudice to the present position of each party to the matter.

Now I wish to proceed with the matter of evidence or whatever it is that is a part of the plaintiffs' case in chief.

Mr. Riley: Very well. Mr. Donald Maynard, come forward, please.

The Court: Will that gentleman come forward and be sworn. And when you have in mind calling a witness other than your own, will you let me know positively what your intentions are?

Mr. Riley: Yes, your Honor.

HUFFORD DONALD MAYNARD

one of the plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riley): Mr. Maynard, would you state your full name for the record, please?

A. Hufford Donald Maynard.

Q. Where do you reside, Mr. Maynard?

A. At the present time 4326 Sharon Avenue, [3] Detroit, Michigan.

Q. How long have you resided there, Mr. Maynard?

A. Off and on approximately three years.

Q. What is your——

The Court: Now I will have to ask you to repeat. May I have your name, please?

A. Hufford Donald Maynard.

The Court: How do you spell the first name?

A. H-u-f-f-o-r-d.

The Court: And the second word is Donald?

A. Yes, sir.

The Court: And the last word is what?

A. Maynard, M-a-y-n-a-r-d.

(Testimony of Hufford Donald Maynard.)

The Court: You may proceed.

Q. (By Mr. Riley): You are one of the plaintiffs in this proceeding before this Court, is that right, Mr. Maynard? A. Yes, sir, I am.

Q. What is your employment? In what occupation are you engaged at the present time?

A. I am a clerk with the Ford Motor Company.

Q. How long have you been so employed?

A. I have about four years' seniority with the company.

The Court: And where is your present home?

A. Detroit, Michigan, sir. [4]

The Court: You may proceed.

Q. (By Mr. Riley): Where did you reside prior to the time you arrived in Detroit, Michigan?

A. Spruce Pine, Alabama.

Q. How long did you live in Spruce Pine prior to the time you arrived in Detroit, Michigan?

A. Well, I was born there, and I left there when I was about two years old. I moved to Sullivan's Island, South Carolina. I lived there until about 1941, then I moved back to Alabama, and I joined the service in 1945.

I got out of the Navy in 1947. I went to a school, Birmingham Business College in Birmingham, Alabama. I went there until 1949, then I joined the Air Force, and I stayed in the Air Force in the States for about a year and then I went to Japan. I got to Japan August the 11th, 1950, and I was there up until 1952 when I left for the United States on emergency leave.

(Testimony of Hufford Donald Maynard.)

Q. What was the date you left Japan, do you recall? A. January the 17th, 1952.

Q. How did you leave Japan?

A. By Northwest airplane from Haneda Airport in Tokyo.

Q. And would you describe the route that this flight took? What was the first stop of this aircraft?

A. The first stop that I remember of was at an Air Force base some place in Alaska. [5]

Q. When you boarded this flight were you given any ticket or did you have an type of a ticket that you had received from Northwest Airlines?

A. No, sir. They kept us at the airport until the airplane was ready to load the passengers and they called us out by name, seniority by rank, to board the airplane, and you would get on the airplane and set wherever there was a seat available for you. There was no tickets involved.

Q. What was the first stop of the aircraft again, please?

A. It was Shemya, Alaska, I believe is the correct name for it.

Q. How long did you remain——

The Court: Will you spell it for the record? The reporter I am sure would appreciate it.

Mr. Riley: For the record it's S-h-e-m-y-a, Shemya.

Q. (By Mr. Riley): How long did the ship remain in Shemya?

A. It was approximately four hours.

Q. Did anything unusual occur at Shemya?

(Testimony of Hufford Donald Maynard.)

A. Yes, in a way. They repaired the airplane to some extent, I don't know exactly what it was, and they refueled the airplane and got back on it.

Q. Did the passengers disembark at Shemya?

A. Yes. It was I think an Air Force base there. We got [6] off and had a meal and waited around till we could board it again.

Q. Were there any passenger changes that you were aware of effected at Shemya?

A. No, sir, there was no passenger changes that I know of.

Q. What was the next stop?

A. The next stop was Anchorage, Alaska.

Q. How long did you remain there?

A. About eight hours, I guess.

Q. Did anything unusual occur there?

A. Not that I know of. It's a Customs stop for us. We had——

Q. Were there any passenger changes that you know of effected there?

A. There was no passenger changes. It was to check to see if you brought any illegal merchandise from the Far West.

The Court: Then after Shemya, did you ask him the next stop after Shemya?

Mr. Riley: Yes, Your Honor.

The Court: And that was what, did you say?

A. Anchorage, Alaska, Your Honor.

The Court: Anchorage, Alaska. How long did you stay at Anchorage?

A. About eight hours, sir. [7]

(Testimony of Hufford Donald Maynard.)

The Court: You may proceed.

Q. (By Mr. Riley): At any time during the flight between Japan and Anchorage was there any instructions given you in the use of life jackets or survival equipment?

A. No, sir, there wasn't.

Q. How many flights, by the way, Mr. Maynard, had you had at that time in other types of aircraft?

A. That was the third time, the third time I was in an airplane.

Q. What type of flights were the others?

A. The first one was a small seaplane, I believe it was about a six passenger airplane, and the second one was a military C-45, a small airplane, two-engine type.

Q. Are you familiar with the literature that are installed in commercial aircraft?

A. Yes, I have seen 'em.

Q. Now, at any time at this point or on your flight between Japan and Anchorage did you have such literature available to you in this aircraft?

A. I did not see any on this aircraft.

Q. Did you look for it?

A. I looked in the back of the seat. In front of you there's a pocket there for the containers when you get sick and to hold magazines and pamphlets and so forth, and there was nothing in this one except some of those [8] containers when you get sick and a picture postcard of some type of aircraft. I forget which one it was now.

(Testimony of Hufford Donald Maynard.)

Q. Do you recall the date the aircraft left Anchorage?

A. That was the 19th of January.

Q. To where was the plane destined as it left Anchorage?

A. It was to go to McChord Field, McChord Air Force base.

Q. So far as you know were all the passengers aboard the aircraft the same as the passengers that embarked in Japan?

A. Yes, sir, they were.

Mr. Koch: I object to that, your Honor. It's a leading question.

The Court: That objection is sustained.

Try to avoid leading questions.

Q. (By Mr. Riley): Do you know whether or not there were any passenger changes effected at Anchorage as the aircraft departed?

A. No, sir, to my knowledge there were no passenger changes at all any place on the trip.

The Court: Passenger changes?

A. Yes, sir, passenger changes.

The Court: What do you mean by that? With reference to adding to or decreasing the number of passengers?

A. Well, I mean, sir, that there were no [9] scheduled places for any passengers to get off any place. They were all supposed to have been on the aircraft from Tokyo to McChord Air Force Base.

The Court: How many did get on, if any, and

(Testimony of Hufford Donald Maynard.)

how many got off, if any, at any of those points mentioned by Counsel's last question to you?

A. There were forty passengers got on at Tokyo and no passengers got on or off at the two stops.

The Court: You mean no additional passengers?

A. Yes, sir.

The Court: Or other passengers.

A. Yes, sir.

Q. (By Mr. Riley): After you left Anchorage I will inquire whether or not you were instructed in the use of life jackets or emergency landings or the use of emergency equipment in the aircraft?

A. No, sir, we wasn't.

Q. How long were you in the aircraft or how long was the aircraft airborne before it landed next?

A. It was about four hours until they tried to—made an attempt to land at Sandspit, approximately.

Q. During that four hours between Anchorage and Sandspit were you aware of or did you find any literature of any kind or were there any other discussions or were [10] you apprised of any emergency situation? A. No, sir, I wasn't.

Q. Did anyone tell you whether or not an engine on the aircraft had been feathered?

A. No, sir.

Mr. Koch: That's leading, your Honor. That's a leading question. He has already answered it by the preceding question.

The Court: Do you admit that you have?

(Testimony of Hufford Donald Maynard.)

Mr. Riley: I'm sorry. It was a leading question, your Honor.

The Court: Very well. The Court sustains the objection.

Q. (By Mr. Riley): Would you state your position in the cabin, Mr. Maynard?

A. I was on the right-hand side just back of the right wing on the seat next to the wall.

Q. How did you know or where did you know that you were going to land at Sandspit?

A. We didn't know we was going to land until the flasher lights up in front of the cabin told you no smoking and fasten your seat belts, that we were going to make a landing.

Q. Did any member of the crew come back and talk to you in any way? [11]

A. The stewardess was in the cabin at the particular time and she went by to see that everybody had their life belts fastened and that there was no one smoking.

Q. What if any other information was related to the passengers in the cabin?

A. That was it. There was no more.

Q. Did you know where Sandspit was?

A. No, sir, I didn't.

Q. Did you know whether the aircraft was over the water or over land?

A. I didn't know that it was over either one, but I surmised that it was probably over water.

Q. In the flight between Anchorage and Sandspit can you relate or did you observe the weather?

(Testimony of Hufford Donald Maynard.)

A. Occasionally I looked out of the window and you could see a cloud once in a while. It was dark, though, you couldn't see too much of anything.

Q. Were the windows clear or frosted?

A. At times they would have a little frost on them, but usually it was pretty clear.

Q. Can you say whether or not the air was rough or smooth or otherwise?

A. I would say it was fairly smooth.

Q. When did you first—after you left Anchorage when did you first see the ground? [12]

A. I actually didn't see the ground. The only thing that I seen were a couple of the runway lights; when the airplane first touched on the runway I seen one or two of those, and that was it. I didn't see any others.

Q. Would you describe as you recall it the approach to the field in the aircraft?

A. It was into the left, he banked to the left into the position of the field, and you couldn't see—I couldn't see nothing out the window except just a little patch of clouds once in a while, and stars, you could see stars a little bit, and that was all you could see.

Q. Could you observe from your position in the cabin at what point the aircraft touched down on the runway?

A. No, I don't think I could.

Q. Was the aircraft on the ground for any period of time? Or how long was the aircraft on the ground? Let me phrase it that way.

(Testimony of Hufford Donald Maynard.)

A. I couldn't say exactly how many minutes or seconds. I know that it was a very short time, though.

The Court: What was on the ground a short time, if it was a very short time, if you know?

A. Sir, the length of time it was actually on the ground.

The Court: The plane? [13]

A. Yes, sir.

Q. (By Mr. Riley): When did you know that you became airborne again?

Mr. Koch: Your Honor,——

The Court: That objection is sustained. He has not said that he did know that they became airborne again.

Mr. Riley: That's right.

Mr. Koch: Your Honor, I object to any further questions in this series because this raises the point that was discussed when these attempted amendments to the complaint were made, your Honor.

The Court: I wish to proceed. We will see later about the amendments. This may be stricken. The reporter will note in the record that this be subject to later objection as not being within the issues.

Mr. Koch: Your Honor, I wonder if I may ask the Court's indulgence with respect to this particular witness from now on that Mr. Karr conduct any objections and also his examination.

The Court: Each examining Counsel has to conduct his own questioning and his own——

(Testimony of Hufford Donald Maynard.)

Mr. Koch: I wish to withdraw with respect to this witness because Mr. Karr is familiar with [14] having taken his deposition and I was only attending to it in Mr. Karr's absence.

The Court: Very well. Hereafter will both Counsel who expect to participate in the trial be here all the time, please, if they wish to? I would not want to duplicate this situation again, but that may be done in view of that circumstance. But even a similar circumstance in the future during this trial would not justify the changing of attorneys in the midst of the interrogation. I ask you to determine that before you start, will you please?

Mr. Koch: Yes, your Honor.

The Court: You may proceed, Mr. Karr, if you wish to, and this question may be asked under conditions stated by the Court.

Q. (By Mr. Riley): Would you state what if anything happened after the aircraft touched down on the runway?

A. I don't know exactly if anything happened. I know you could feel the airplane being given more power to take off from the ground again, and all of a sudden it hit and the lights were out, and then for the length of time it took to unfasten my safety belt and to get to the emergency door, which was by the seat in front of me, there was water inside of the airplane, and that was the first time that I actually knew that we was [15] in the water.

Q. Were there any lights in the cabin after this impact? A. No, sir, there was not.

(Testimony of Hufford Donald Maynard.)

Q. Would you state again how you got out of the cabin, if you got out?

A. Through the emergency door over the wing on the right side.

Q. Did that take you out onto the wing?

A. It's approximately about the middle of the wing.

Q. And which wing of the aircraft again?

A. That's the right-hand wing.

Q. Do you recall how many people evacuated the aircraft by that route?

A. I would say about eight people got out on that wing.

Q. Did you have a life jacket?

A. No, sir, I didn't have one.

Q. Did you ever see one?

A. I seen one that a survivor had on. I seen it at a distance.

Q. Did you see any in the aircraft?

A. No, sir, I didn't see one in the aircraft.

Q. Were any rafts—did you see any rafts in the aircraft?

A. No, sir, I did not see a raft inside.

Q. Were any rafts taken from the aircraft?

A. There was supposed to have been an attempt to get one [16] out, but there were never one taken out of it.

Q. Do you know what happened in that respect?

A. It was supposed to have blown—

Mr. Karr: Just a moment, please, Mr. Maynard.

The Court: Leave out the "supposed." Do not

(Testimony of Hufford Donald Maynard.)

say that. You can say what you observed, that is all.

A. No, sir, I don't know what happened to it.

Q. (By Mr. Riley): What could you see from your position outside the airplane, if anything?

A. Very little.

Q. What did you see?

A. I seen the people within four or five foot from me, and that's about all you could see distinctly and clearly to know what you were seeing.

Q. Did you see any lights anywhere else?

A. I seen one flashlight. I supposed it was a flashlight at the time.

Q. Could you see the shore?

A. You could see automobile headlights and lights in houses, but that was it, you couldn't actually see the shore.

Q. You described automobile headlights. Now, how many of those were there? A great number, or——

A. No, just a few. Maybe two or three.

Q. Did you remain on the wing of the aircraft, or how long did you remain on the wing of the aircraft?

A. I was on the wing of the aircraft from the time I got outside the airplane until the time we was rescued.

Q. How many people were on that wing of the aircraft with you?

A. At the time we was rescued there were seven, seven people on that wing. Prior to that they would fall off the wing and not come back, and there

(Testimony of Hufford Donald Maynard.)

would be other people coming from other parts of the airplane, too, to that wing, because that wing at the time, the tip of it was the highest part out of the water, and the main object of the people was to get out of the water.

Q. Do you know whether or not there were people on other portions of the aircraft?

A. Actually you couldn't see people, but you could hear 'em yelling for help. Whether they was actually in the water and trying to get back on the airplane or just hollering for help in general.

Q. Do you know whether or not anyone was injured inside the cabin of the airplane at the point of impact? A. No, sir, I couldn't say.

Q. When you evacuated the cabin did you see any of the crew of the aircraft? [18]

A. No, sir, I didn't see any of the crew.

Q. Did you receive any instructions from anyone when you evacuated the aircraft?

A. The only instructions that I received getting out was somebody said, "Don't strike a match inside the aircraft," and that was all the instructions that were handed out.

Q. Now would you describe what happened to you from the point that you were able to evacuate to the wing, how long you were able to stay there?

A. Pardon me? What was that question?

Q. I'll rephrase the question. Would you describe what happened to you, if anything, while you remained on the wingtip with your other survivors

(Testimony of Hufford Donald Maynard.)

A. Well, when I first went out on the wing the object I had in mind was to swim to shore, but the water was so cold and numbed that I knew I couldn't do any good at it, so I decided I would take my shoes off so I could get better footing on the wing, and I—the water was cold and it would make your hands numb, and I had to ease my finger up under the shoe string to break it to pull off my shoes, and I took off my coat and tie and my shirt. I had on a sweatshirt on under the shirt. And the tide was coming in. It had pretty good sized waves; not real big, but it was enough to knock you [19] down. The wing was slippery from oil, I suppose it was oil or gas or something, and it would knock you off and you'd reach up to grab somebody or hold to the wing or any way that you could get back on, and usually there was somebody there to pull you back up on it, and there would be people swimming around, yelling, so actually you couldn't keep track of what actually was going on all the time. But we stayed there, and pretty soon there was seven left. Everybody would shout and scream and whistle, and pretty soon you could see in the distance a little red light, and there was a boat coming after us. It had two men. It was a two-man fishing boat with a little trolling motor on it, and they asked us, they said, "Is there anybody else there?" We said, "We don't know." So he circled the aircraft and come back and he said, "The only thing I can do is take two of you at a time." He says, "This boat is a two-man boat

(Testimony of Hufford Donald Maynard.)
and there's already two people in it." He says, "I'll take one or two of you at a time," and he says, "Unless you want to hold onto the boat and take a chance of getting towed in." So we elected to do that, and we were towed in to shore.

The Court: How many of you held onto the boat in some manner while you were in the water being towed by the boat? [20]

A. We put our arms over the side of the boat and held on that way. There was two of 'em in the back and the rest along the side. Now, one of the men lost his grip and the man that was operating the motor in the back or one of the other survivors grabbed him and put him in the boat, so that left six on the outside.

The Court: You mean all seven of those people who were on that wing tried to be towed in at one and the same operation of the boat, of that small boat?

A. Yes, sir, they were drug in that way.

The Court: You may proceed.

Q. (By Mr. Riley): At the time this boat came out to tow you in how long had you been on the wing of the aircraft?

A. About an hour and a half.

Q. How long did it take the boat to take you in to shore?

A. About fifteen minutes, ten or fifteen minutes.

Q. Can you say what happened to the people on the other parts of the aircraft?

A. Actually I don't know exactly what hap-

(Testimony of Hufford Donald Maynard.)

pened to 'em, but I know the water was cold and it would make you want to give up awful easy.

Mr. Karr: Just a moment. May it please [21] your Honor, it seems to me that's getting speculative.

The Court: The objection is overruled. That answer may stand.

Q. (By Mr. Riley): Why did the seven of you on the wing decide not to have the boat take you in two at a time?

Mr. Karr: That is objected to as immaterial, your Honor.

The Court: That objection is sustained. They did for good or bad reasons.

Mr. Riley: My intention there was only to show, your Honor, that they figured it was too cold, that they couldn't have made another round trip. That seemed to indicate the temperature of the water and the conditions under which——

The Court: He has already done so.

Q. (By Mr. Riley): What happened to you after you reached the beach then, Mr. Maynard?

A. When we reached the beach there were some people there. I don't know how many there were. I know definitely there was a car and a pickup truck there, and the Canadians there walked down to the edge of the water and picked us up, those that couldn't walk, and put us in trucks and a car.

Q. Where did the boat land, do you know, on the beach or a dock? [22]

A. It was a beach. There was a beach with logs

(Testimony of Hufford Donald Maynard.)

and driftwood and stuff on the beach. They put us in a pickup truck and a car and put blankets on us and took us to a big house. I don't remember what it was, but I think it belonged to the Canadian Pacific Airlines. But they took us into this house and stripped us, put us around a big stove and put blankets on us, gave us hot coffee and kind of rubbed us a little bit and put us in bed with blankets, quite a few blankets, hot water bottles, heating pads, and what they had.

Q. Were you all in one house?

A. Yes, sir, we were.

Q. How long did you remain there?

A. Until the following afternoon.

Q. By the way, were you able to walk to the truck or from the truck to the house?

A. No. I was half way carried. There was two people, one on each side of me, and I hobbled along that way.

Q. Did you receive medical treatment while there?

A. Yes, sir. There was a Canadian doctor that flew in the next—that morning about ten o'clock, and he gave us shots of penicillin and pills of some kind, and left.

Q. What happened to you then?

A. We stayed there that afternoon and then we were flown [23] to McChord Field, Air Force Base, and we went to the Air Force hospital there.

Q. What was your condition when you arrived at the hospital at McChord Air Force base?

(Testimony of Hufford Donald Maynard.)

A. We were still cold and shook up and our feet were real swollen up, cold, and couldn't walk too good, and so they immediately put us to bed and fed us and checked us over for broken bones and bad cuts. They gave us penicillin and sleeping pills, and I went to sleep.

Q. You described cuts. Where were these or what were these?

A. No, I say they looked you over for cuts and broken bones.

Q. Oh, I see. How long were you in the hospital at McChord Air Force base?

A. We got in that night and the next afternoon we left McChord.

Q. Where did you go? A. I went home.

Q. What was the condition of your feet then?

A. They were swollen. I couldn't get my everyday service shoes on, so the Air Force gave myself and Lieutenant Baker, and there was a couple more but I forget who they were now, these big Arctic boots to wear because [24] we couldn't wear normal shoes.

Q. How long did you wear those?

A. About two days.

Q. Were you able to wear shoes after that?

A. You could wear shoes but they would be real tight, they wasn't comfortable, but too many people would laugh at you with those big white shoes on, so you figured you'd give up a little discomfort.

The Court: I think we will stop here. Court is adjourned until tomorrow morning at ten o'clock.

(Thereupon, at 4:35 o'clock p.m., a recess herein was taken until 10:00 o'clock a.m., Tuesday, March 26, 1957.)

Tuesday, March 26, 1957.

10:00 o'clock a.m.

(All parties present as before.)

The Court: Counsel may proceed with the plaintiff's case in chief. If you have some questions you think you can settle about the unfinished matter from yesterday, I will hear you.

(The Court heard oral argument by Mr. Koch and Mr. Riley.) [25]

The Court: In view of what defendant's Counsel has said the Court rules as follows:

That the subpoenas against the individuals served in some territorial jurisdiction other than that within the limits of this court, the Western District of Washington, are ineffective and may further be considered null.

The subpoenas of the corporation to produce certain documents here have been effectively responded to by the voluntary production by defendant corporation of the records which have been spoken of heretofore and a moment ago also as records now on Counsel table.

Therefore, as to records only of the defendant, the Court rules that they are here and that the motion to quash the subpoenas against the corporation is denied, but the Court rules that that subpoena of records has been accomplished by means of a production by the defendant corporation of

the pertinent records and placing those records on Counsel table in the presence of the Court during this trial. Those records will be kept on Counsel table subject to the Court's further order. They are not at this moment admitted in evidence.

You may proceed.

Mr. Riley: Call Mr. Maynard to return to [26] the stand.

HUFFORD DONALD MAYNARD

(resumed the stand.)

(Direct Examination—(Continued))

Q. (By Mr. Riley): Mr. Maynard, yesterday we were discussing your evacuation from Sandspit, British Columbia, and before proceeding I wanted to ask you just a couple more questions relating to the people that were helping you in the crash there. How many people were there available and helping you at the most at any one time?

A. The most people that I seen at one time was six people.

Q. Who were those people?

A. That was the two men that rescued us in the boat and the elderly woman that was a cook for this house where we were staying, another man, a woman and a young boy.

Q. How many people were on the beach to assist you into the house after you were rescued?

A. I remember four.

Q. Now, these vehicles that you described as having picked you up, what were they again?

(Testimony of Hufford Donald Maynard.)

A. One was a pickup truck with a canopy like over the back, and a private automobile.

Q. Do you know whether or not these were privately owned [27] automobiles or were part of the field equipment?

A. They were privately owned vehicles.

Q. Do you know whether or not the boat which was used as a part of your rescue was a part of the field equipment?

A. That boat was a—belonged to one of the men that came to rescue us. They told us when they took us to the house that——

Mr. Karr: Just a moment please, Mr. Maynard.

The Court: You cannot say what they told you. That comes under what they call hearsay, which is not permissible over objection under the circumstances usually.

Mr. Riley: If your Honor please, if I might inquire, I would like to state that I believe that portions of this testimony would come within the res gestae portion of the exception to the hearsay rule, if I might inquire.

The Court: You may make that inquiry.

Q. (By Mr. Riley): When did you hear these conversations to which you were just now referring, Mr. Maynard?

A. That was when we were in the house and they was warming us up. The men was telling us that they were——

(Testimony of Hufford Donald Maynard.)

Mr. Karr: Just a moment, please, Mr. Maynard. I object, your Honor. [28]

The Court: You cannot say what he said. The time——

Q. (By Mr. Riley): How long after the crash was this, Mr. Maynard?

A. About an hour and forty-five minutes.

The Court: Where did it occur? Where, at what place did this occur?

A. The conversation, sir, would take place at the house where they had us to warm us up at.

The Court: That was after the small boat came to get you and took you to some place of refuge?

A. Yes, sir.

The Court: The objection is sustained.

Q. (By Mr. Riley): Was anything said at the scene of the crash by these men to you?

The Court: You would have to establish when, if there is objection to it.

Mr. Riley: Well, I'll only ask him yes or no, as to whether anything was said there, your Honor, and then I'll ask him when.

The Court: You may do that.

Q. (By Mr. Riley): Was anything said by these men at the scene of the accident?

A. One of the men in the boat——

The Court: Answer yes or no. [29]

Q. (By Mr. Riley): Just yes or no.

A. Yes.

(Testimony of Hufford Donald Maynard.)

The Court: Who were the men that made the statements?

A. I don't know them personally, sir.

The Court: Do you know for whom they were acting, if anyone? A. They weren't—

The Court: Just bystanders?

A. Yes, sir.

Q. (By Mr. Riley): Say again who these men were in the boat.

A. One of the men was a radio operator at the airstrip and the other man was an individual, a civilian, no connection with the airstrip.

Q. And did you state that there were conversations at the time you were picked off of the aircraft? A. Yes.

Q. Now, how long after the crash was that?

A. A hour and a half, thereabouts.

Mr. Riley: Then, Your Honor, I request permission to inquire what was said that would lead him to believe that this equipment was not field equipment, because it's an hour and a half within the accident and I believe it's within the *res gestae* exception. [30]

Mr. Karr: Your Honor, I don't quite see how the *res gestae* exception would apply.

The Court: The Court will have to sustain the objection.

Mr. Riley: Very well, Your Honor.

Q. (By Mr. Riley): Before proceeding then, Mr. Maynard, would you state once again how long

(Testimony of Hufford Donald Maynard.)

it took you to evacuate the aircraft from the point of impact until you got out of the aircraft?

A. I don't know exactly. About two minutes.

Q. How much water was in the aircraft at the time you left it?

A. Approximately ankle deep.

Q. How long did it take the aircraft to submerge?

Mr. Karr: Objected to. It has never been testified that the aircraft submerged. In fact, it didn't.

The Court: You will have to establish the fact concerning submersion before the question——

Mr. Riley: I'll withdraw the question.

Q. (By Mr. Riley): Did the aircraft sink, Mr. Maynard? A. The aircraft——

The Court: Answer yes or no.

A. Yes.

Q. (By Mr. Riley): How long did it take the cabin of the [31] aircraft to become submerged?

The Court: You know, one way of doing that normally would be to say, "State what parts you observed submerged meaning parts of the airplane." You have not really laid the foundation.

Mr. Riley: Very well, Your Honor. I'll withdraw the last question.

Q. (By Mr. Riley): Did the aircraft fuselage or cabin submerge? You can answer that yes or no.

A. Yes.

Q. And can you state how long it took it approximately to submerge?

(Testimony of Hufford Donald Maynard.)

The Court: You see, Mr. Riley, that type or form of question is liable to produce an irresponsive answer. It would be proper to ask him the question for the information you wish if anything of that sort happened based on that condition in your question.

Mr. Riley: Yes, Your Honor. I'm skipping here. I appreciate the Court's comment. Is that last question proper?

The Court: No, I do not think so. Change it.

Q. (By Mr. Riley): Can you state then, Mr. Maynard, what portions of the aircraft did sink or submerge? A. Yes, I can. [32]

Q. Well, then would you state what portions did submerge?

A. The airplane except for the right tip of the wing up to and including the tops of the windows was submerged under water, and the tide kept coming in and eventually all of it was submerged except for the extreme tip of the right wing and the vertical stabilizer.

Q. All right. You have testified that before the tide came in that the water reached the window level of the aircraft, and I will ask you if you know how long did it take the water to reach the window level of the cabin?

A. I don't know exactly in the matter of minutes, but to the best of my knowledge I would say three or four minutes.

Q. Would you tell us what you know about the

(Testimony of Hufford Donald Maynard.)

temperature of the water after you evacuated the aircraft?

A. The water would numb you almost instantly. When you were standing on the wing your feet felt like they wasn't there, like you were standing on your ankles or nubs. You didn't have any footing. And the shore line when we were on the—got to the beach, there was ice, the salt water had frozen. There was ice there, and it was cold enough to numb you and you didn't have any feeling there.

Q. Did you have any other injuries as a result of or which [33] were inflicted in the crash or after the crash?

A. I don't actually know whether it was in the crash or not, but when we got to the house they found that I had a small scratch on the side of my head and a bruise on my leg.

Q. I'll ask you once again, Mr. Maynard, whether or not you had any information as to why you were landing at Sandspit, British Columbia?

A. No, I didn't.

Q. Were you told by anyone at any time that there was any difficulty at all with the airplane?

A. No, sir, I wasn't.

Q. When did you find out, if you did, what the reason for the landing was?

A. I didn't find out that there was anything wrong with the aircraft until the Civil Aeronautics Administration were questioning us at the house.

Q. Now, you stated you were evacuated to Mc-

(Testimony of Hufford Donald Maynard.)

Q. (By Mr. Riley): How long did this condition persist?

A. The swelling stayed approximately two weeks, but even two or three weeks after that the pain would still be in the feet and the discoloration there.

Q. Now would you describe the pain that you experienced from this condition during the first two weeks?

A. It was an aching sensation and the feet were warming up and it had a burning sensation to it.

Q. Have you had continuing difficulty from your feet or did it continue from that time on?

A. No, it didn't continue from that time on. It never completely cured, but it didn't bother me afterward, after about two months after that, until I started walking around a lot, and then they started bothering me again, especially my legs.

Q. All right. You say it bothered you a lot. Would you describe what your trouble was?

A. It was an ache and a tightness to my legs.

Q. Well, is this a pain or just a feeling? What is it?

A. It's a pain.

Q. How do you obtain relief or how did you obtain relief from it?

A. By laying down, taking a hot bath, soaking the legs.

Q. How long would this condition last? [37]

A. Approximately an hour.

Q. Is there any set pattern to it?

A. No, sir, there's no set pattern. It depends on the amount of walking I do, or standing.

(Testimony of Hufford Donald Maynard.)

Q. Did you have any medical treatment for your condition while you were home?

A. No, sir, I didn't.

Q. Did you see a doctor at all?

A. While I was at home?

Q. Yes. A. No.

Q. Is there any particular reason for that?

A. No, sir, there's no particular reason.

Q. How long did you remain at home?

A. Forty days.

Q. Where did you go then?

A. I went to Camp Stoneman, California, in preparation for going back overseas.

Q. Did you return to your station?

A. Yes, I did.

Q. And where did you return?

A. To Tachikawa, Japan.

Q. Now, what kind of work were you doing there, Mr. Maynard?

A. That was a clerical job. It was supply records. It [38] involved supervising Japanese personnel and approving of inventory forms.

Q. Did this involve any manual labor?

A. No, sir, it didn't.

Q. What was your physical condition with respect to your feet and legs at that time?

A. At that particular time they didn't bother me too much, because, as I stated, I didn't involve myself in any type of work other than just setting down.

(Testimony of Hufford Donald Maynard.)

Q. Did it bother you at any time?

A. When I went back overseas?

Q. Yes, at that time.

A. Yes, it did. We had parades and inspections, and the length of time that we stood there would bother me considerably.

Q. Is there any way that you found that you could relieve the trouble you were having?

A. The only way I found was to lay down and take a bath in hot water.

Q. How long did you remain in Japan then?

A. About eight months.

Q. And where did you go then?

A. I went to an Air Force base in Montgomery, Alabama.

Q. And how long were you there?

A. Approximately two months, for discharge.

Q. Were you released from the service then?

A. Yes, sir, I was.

Q. Where did you go then?

A. I went back home to Alabama.

Q. Now, were you still having any difficulty with your legs at that time?

A. Occasionally I would.

Q. Would you describe how often you had difficulty?

A. I couldn't say a definite pattern on it. It depends. I couldn't do a normal amount of walking without the legs started hurting me. It's just impossible to set a certain amount of—a certain pattern.

(Testimony of Hufford Donald Maynard.)

Q. Well, on an average over a week's period of time what difficulty would you say you had in a typical week? A. Two or three times.

Q. For how long a period of time, Mr. Maynard, on the average?

A. On the average of three hours.

The Court: What were those three hours referred to? What happened during those three hours? A. Sir, he asked me——

The Court: You tell the Court what happened during those three hours.

A. The legs would continue hurting.

The Court: For that length of time, is that [40] what you mean to say? A. Yes, sir.

The Court: Or do you mean something else?

A. No, sir, that's what I meant to say.

Q. (By Mr. Riley): How would obtain relief from that then, that condition?

A. Usually I lay down and raise my feet slightly, but I found that setting in a bathtub with hot water, as hot as I could stand it, would relieve it faster than anything.

Q. How long then did you remain in your home in Alabama? Just in months approximately, Mr. Maynard.

A. Approximately two or three months.

Q. Where did you go then?

A. I went to Memphis, Tennessee.

The Court: Did you learn how to say "Tennessee" there or here? A. Pardon?

(Testimony of Hufford Donald Maynard.)

The Court: Did you learn how to say "Tennessee" there or here? A. There, I suppose, sir.

The Court: You may inquire.

Q. (By Mr. Riley): Were you employed there, Mr. Maynard? A. Yes, I was.

Q. What type of work did you have there? [41]

A. It was for the Fisher Lime and Cement Company. I guess you would consider it a warehouse clerk for city sales. You would walk through the warehouse locating different items, out in the yard to check and see if they had a particular type of brick, just general locating items that they had sold.

Q. How long did you stay with that employment?

A. I stayed there approximately nine months.

Q. Any reason for leaving there? A. Yes.

Q. What was that?

A. They decided they had to make a reduction in their personnel.

Q. Were you still having trouble with your legs then? A. Yes.

Q. Would you describe again what difficulties you were having at that time?

A. The amount of walking would bother them. It would make them ache, a real tightness to them, and I would set down each time I had a chance, which wasn't very often, and then when I got home I would immediately lay down.

Q. All right. What was your next occupation?

(Testimony of Hufford Donald Maynard.)

A. Ford Motor Company.

Q. And where was that?

A. Detroit, Michigan. [42]

Q. And would you state now about when this took place? A. In the summer of 1953.

Q. What type of work were you doing there, Mr. Maynard?

A. That was—it was under the production control. I kept records of the particular type of job, the number of man hours that were spent working on it.

Q. Were you walking or standing or what?

A. I had a job setting down.

Q. Did you have any particular difficulty there with your legs and feet?

A. Occasionally they would bother me.

Q. Under what conditions——

The Court: When you were a young fellow did you do any plowing of corn or cotton?

A. No, sir, I never plowed.

The Court: Did you ever do any leg work like 'coon hunting at night and staying out a long time at night and getting tired?

A. No, sir, I never participated in sports or anything like that.

The Court: So you can't compare the trouble you had with your legs and feet at these times while in Memphis and later with that kind of fatigue, can you? From personal experience, I mean.

(Testimony of Hufford Donald Maynard.)

A. Except from the service from hikes and [43] so forth.

The Court: I was trying to see if there would be any difference in kind as to symptoms from the kind that comes from fatigue to a young fellow than that which came from what you thought this came from.

A. No, sir, it was a different feeling from being tired. It actually was a ache there.

The Court: You may proceed.

Q. (By Mr. Riley): How long did you remain employed by Ford Motor Company?

A. To July, '54.

Q. By the way, Mr. Maynard, how old are you now? I haven't asked you that.

A. I am twenty-eight. I'll be twenty-nine in June, June 5th.

Q. And at the time of the crash how old were you again? A. Twenty-four.

Q. How long had you been in the service at the time of the crash? A. Almost four years.

The Court: Before this accident what was the state of your health, your general health?

A. Excellent.

The Court: Did you have any trouble with [44] the circulation of blood in your legs?

A. No, sir.

The Court: You may inquire.

Q. (By Mr. Riley): Did you have any difficulty of any kind similar to what you have experi-

(Testimony of Hufford Donald Maynard.)
enced subsequent to the crash of the aircraft?

A. No, sir, I haven't.

Q. What types of strenuous activity had you engaged in when you were in the service for those four years that would give exhaustion?

A. Parades, standing a long time at the parade, or inspections, something of that nature.

Q. Did you go through basic training in both the Navy and the Air Force?

A. In the Air Force I went to what they call a two weeks indoctrination, where they give you clothes and shots and that's all, there was no basic training.

Q. You testified that you were in the Navy. Did you take basic training with them?

A. Yes, I did.

Q. During any of your courses of indoctrination and basic training did you have any difficulties with your legs or feet?

A. I don't recall right now any particular instant.

Q. Were you having any difficulty with your legs and feet [45] or any other portion of your body at the time of the crash of the aircraft?

A. No, I wasn't.

Q. Where did you go after you left the Ford Motor Company then?

A. I was looking for a job and I couldn't find one then, and so I decided I would see if I could get back into the service again, and by going into

(Testimony of Hufford Donald Maynard.)

the service I could have retained my seniority with the company, because when they laid me off there they put me available to the union labor pool, which I could bump if I had sufficient seniority, which I didn't have, and so I went to the various branches of the service to get in at a rank approximately to what I got out of the Air Force with, which in this case it was the Marine Corps.

Q. Did you enlist then in the Marines?

A. Yes, I did, in the Class 3 Reserve.

Q. Where were you stationed first?

A. I first went to the Parris Island Marine Recruiting Depot.

Q. Did you go through basic training there?

A. Yes, I did.

Q. Did you have any difficulties there?

A. Yes, I did. [46]

Q. What were the difficulties?

A. A real sharp pain in my right leg from the hikes, and their—what they call close order drill.

Q. Did you consult a doctor while you were in the Marines about this problem?

A. No, I did not, not—excuse me. You say while I was in the Marine Corps?

Q. Yes. A. Yes, I did.

Q. All right. What was—

The Court: When was this? How long after the accident was this?

A. When I joined the Marine Corps, sir?

The Court: Yes. A. Two years.

(Testimony of Hufford Donald Maynard.)

The Court: You began the Marine Corps service two years after the accident, is that right?

A. Yes, sir.

The Court: You may inquire.

Q. (By Mr. Riley): How much of the time, or would you state how often you had difficulty then with your legs while you were in the Marine Corps?

A. Every time we would have a hike or a considerable amount of drilling, which was practically every other day.

Q. How did you obtain relief from that? [47]

A. The only thing I could do was take a shower each night, hot shower.

Q. How long did you stay in the Marines?

A. Two years.

Q. During all that time did you have continuing difficulty? A. Yes.

Q. How often did you have your trouble?

A. There's no set pattern on how often I had it. I couldn't do the normal amount of walking or standing without the legs starting to bother me. I went to see a doctor about the legs because when I would take the hikes I would have to set down and quit the hike, and they would chew me out for that, so I went——

The Court: They did what, chew——

A. Chew me out, yes, sir, bawl me out, and I went to see this doctor, and he made me take off my shoes and socks and he looked at my feet and legs and he says, "I don't see anything, so I can't

(Testimony of Hufford Donald Maynard.)

do anything for you," or something to that effect, and so I forgot about it. I didn't figure that they were interested in helping anybody.

Q. (By Mr. Riley): How long did you stay at Parris Island?

A. Approximately thirteen weeks.

Q. Where did you go after that?

A. Camp Pendleton, California. [48]

Q. And how long were you there?

A. Approximately a month and a half.

Q. Where did you go then?

A. To Camp McNair, Japan.

Q. What kind of work did you do or what kind of duty were you assigned to in the Marines at the time you were shipped overseas again?

A. Electronics technician.

Q. Would you describe it? Did it involve shop work, standing or walking or what?

A. It was definitely shop work with the exceptions of going out in the field. They had a considerable amount of field problems, playing war, and normally I was involved in going to the field with that.

Q. While you were in Japan then did you have any or any less difficulty with your legs?

A. I had more.

Q. And do you know why?

A. Do I know why?

Q. Yes. Or why did you have more trouble?

A. Because I was—I had to walk more frequently, more hikes.

(Testimony of Hufford Donald Maynard.)

Q. Were you able to get any relief?

A. None other than taking a hot bath.

Q. How long did you remain in Japan? [49]

A. Approximately fourteen months.

Q. Were you doing the same work all the time that you were there? A. Yes, I was.

Q. When did you leave Japan?

A. February of '56.

Q. And where did you go?

A. To the Marine Corps Supply Base, Albany, Georgia.

Q. And how long were you there?

A. Until July 21st.

Q. Of what year? A. '56.

Q. And then where did you go?

A. I went back by home for a short visit and then I went back to Detroit.

The Court: You were discharged in Georgia at the Georgia camp in 1956?

A. Yes, sir, in July, July the 21st.

Q. (By Mr. Riley): How long had you been in the Marines then at the time you were discharged? A. Two years.

Q. Isn't that a short term?

A. Yes. It's a special deal they have for the Reserve, two years active, one year inactive.

Q. What job then did you take or what employment or work [50] were you doing then when you returned to Detroit?

A. The job I got when I returned to Detroit,

(Testimony of Hufford Donald Maynard.)

it's a clerical job in the tool and die plant for Ford Motor Company. It involves making out time cards, filling the job orders for the different tools and dies that they make.

Q. Are you walking or standing or——

A. Setting down at a desk.

Q. Are you having more at this time, or at the time you took this job were you having more or less difficulty with your legs than you were having in Japan, for instance?

A. A considerable amount more.

Q. Say again.

A. A considerable amount more.

Q. And why was that, or do you know?

A. I don't know why.

Q. Would you describe the frequency with which you had this difficulty?

A. There's no set pattern. For an example, if I were outside washing my car and doing a good job on it, the amount of time and walking involved in washing a car, my legs will start bothering me. Now, some days if I lay around and don't do anything it doesn't bother me, but if I'm doing—say going shopping or doing [51] any—not an awful amount of walking, less than a normal person would do, it will start bothering me.

Q. All right. Then when it bothers you, how does it bother you?

A. It's a real tight pain within. It's got a throbbing pain to it.

(Testimony of Hufford Donald Maynard.)

Q. Now, do you have any difficulties with your legs in the work that you're doing now?

A. Occasionally they'll bother me at the particular job that I'm doing right now.

Q. When you say occasionally, how often do you mean?

A. Well, I mean if I have a lot of work to do and I set there and do it without getting up and walking around it will bother me, but if I can vary it a little bit, then it won't bother me too much.

Q. What do you mean, vary it?

A. From setting or standing.

Q. Does the cold affect your condition at all?

A. Yes.

Q. In what way?

A. It makes my legs start aching and it turns my feet a little colorless.

Q. Do you feel that your condition restricts your ability to work?

A. If the job—if I had an offer for a job [52] that had a——

Mr. Karr: Just a moment, please. I don't think we should go into an offer for a job he has had, Your Honor.

The Court: Is there any reason why the Court should not sustain that objection?

Mr. Riley: Well, I've asked him, Your Honor, if his condition restricts his ability to work, and I don't know what he's going to say, but——

The Court: The objection is overruled. The Court

(Testimony of Hufford Donald Maynard.)
will not be bound by his answer, but will consider it.

A. I was going to say if I was offered a job that had a lot of walking involved in it that paid more than the particular one I had now, then I would consider this to keep me from earning a better job or more pay.

Q. (By Mr. Riley): What type of job do you feel you have to have because of your condition?

Mr. Karr: That is objected to.

Mr. Riley: I'll strike that.

Q. (By Mr. Riley): Do you feel that you have to have a particular type of job because of your condition? A. Yes.

Q. And what type of job would that be?

The Court: "Is it" is the question; not "would be", but "is it". [53]

Mr. Riley: All right. Thank you, Your Honor.

Q. (By Mr. Riley): What type of job is it that you feel you would have to have because of your condition?

A. The type of job that would require most of the work performed setting down.

Q. Mr. Maynard, during the last two weeks, for instance, have you had any difficulty with your legs?

A. Yes.

Q. All right. Would you tell the Court what difficulty you have had?

A. The most recent trouble I had was yesterday, last night, for example, walking from——

(Testimony of Hufford Donald Maynard.)

Q. I can't hear you, Mr. Maynard.

A. I said the most recent trouble I've had was last night, walking from Fifth and Pine, I think it is, Street, up here to the courthouse yesterday afternoon. The usual tightness and pain.

Q. How long did that last, Mr. Maynard?

A. It lasted till about eleven o'clock last night.

Q. What other difficulty have you had in the last couple of weeks?

A. There was one other particular time the other week that the leg was bothering me real bad, but for the last week or so I haven't been doing much of anything because [54] I've been waiting for this trial and I've been laying around the room most of the time.

Q. How did you come to Seattle from Detroit?

A. How did I?

Q. Yes. A. By Greyhound Bus.

Q. Did you have any difficulty with your legs during your trip out here?

A. After about the first day on the bus the legs started to get the tightness to them. It didn't actually start to ache, but the tightness to them. Before the legs start aching they seem to get a tightness to them, before they start aching, but on the trip out they didn't start aching but they had the tightness to them.

Q. All right.

Mr. Riley: If Your Honor please, it is noon and

(Testimony of Hufford Donald Maynard.)

I had one question I wish to direct to the Court before you recess.

The Court: You may proceed with it now.

Mr. Riley: I beg pardon, Your Honor?

The Court: Proceed with your question now.

(There was a discussion concerning the calling of an out-of-town witness.)

Q. (By Mr. Riley): One other question, Mr. Maynard. Did you lose any personal property in the crash of this [55] aircraft? A. Yes, I did.

Q. Would you tell the Court what it was?

A. That was a portable radio, a watch, wristwatch, a Ronson cigarette lighter, a gold identification bracelet, which those last two items I just got for Christmas, I had never worn 'em, and I had some what I consider important papers; for example, my Navy discharge and picture album with pictures, photos, and a few cheap Orient souvenirs.

Q. What value do you place to the best of your ability, if you recall, on those items that were lost in the crash of the aircraft?

A. Well, for the cigarette lighter and the identification bracelet, I don't know how much they cost because, as I said, they were a present. The radio cost \$37.00 at the Post Exchange. The wristwatch was forty some dollars.

Q. Would you estimate a value, please, on the other items, just a general value, what you think they are worth in the aggregate, other than the watch and radio?

(Testimony of Hufford Donald Maynard.)

A. For the photo album and the papers I couldn't put a monetary value on it, but the souvenirs, about \$20.00.

Q. The other items that were gifts to you, can you approximate what it would cost to replace them? [56]

A. Well, the Ronson cigarette lighter was the windproof type with the leather covering. I suppose that would cost somewhere around eight or nine dollars. And the identification bracelet would cost about twenty.

The Court: Identification what?

A. Bracelet, sir. Gold identification bracelet.

Q. (By Mr. Riley): What physicians have you seen since the accident, since the crash of the aircraft, Mr. Maynard, in chronological order?

A. The first doctor I seen was the Navy doctor when I was in the Marine Corps. The second one was Dr. Cornwell in Birmingham, Alabama.

Q. When did you see him?

A. That was in 1956.

Q. Have you consulted physicians here in Seattle? A. Yes.

Q. For the purposes of examining you before trial? A. Yes.

Mr. Riley: I have no further questions of Mr. Maynard, if the Court please.

The Court: At this time we will take the noon recess until 1:30 this afternoon.

(At 12:05 o'clock p.m., a recess was taken until 1:30 o'clock p.m.) [57]

Tuesday, March 26, 1957.

1:30 o'clock p.m.

(All parties present as before.)

The Court: All are present. You may proceed.

Mr. Karr: I think Mr. Maynard was on the witness stand.

The Court: The witness will kindly resume the stand for further interrogation.

HUFFORD DONALD MAYNARD

(resumed the stand.)

Mr. Riley: May it please the Court, at this time I would like to state that at the commencement of the cross examination of the witness, that it is perfectly permissible with us and we offer to permit Counsel to go beyond the scope of direct for the purpose of their own direct examination for the purposes of defendant's case if they wish, it being my desire at the close of Mr. Maynard's testimony to ask that he be excused, the reasons being, as Mr. Maynard can show to the Court, that he has been absent from his employment since the 4th of March in order to attend the deposition to which we stipulated with Counsel for the defendant and in attendance on the Court since the 12th waiting for the commencement of this trial, and it is working a very grave hardship and his employment is in jeopardy. [58]

(A discussion was had among the Court and Counsel.)

The Court: You may proceed.

(Testimony of Hufford Donald Maynard.)

Cross Examination

Q. (By Mr. Karr): Mr. Maynard, at the time of this accident in January of 1952 you were then with the U. S. Air Force, were you not, sir?

A. Yes, sir, that's right.

Q. And at that time I think you said this morning you were twenty-four years old. Would twenty-three be correct?

A. I was born on June 5, 1928.

The Court: June what?

A. 5th, 1928.

Q. (By Mr. Karr): So in June of 1952 you would have become or you did become twenty-four?

A. (Witness nods his head.)

Q. Now, at the time of the accident how long had you been in the Air Force, Mr. Maynard?

A. Approximately three years.

Q. About three years. So you were around twenty when you entered the Air Force?

A. Yes, sir. [59]

Q. And what had you done prior to that in the way of employment?

A. Right immediately to that joining the Air Force I was going to a business college in Birmingham.

Q. How long did you attend that business college?

A. Approximately eight or nine months.

Q. And prior to that had you been employed in some way?

A. No, sir.

Q. Were you in school up to that time?

(Testimony of Hufford Donald Maynard.)

A. No, sir. I joined the Navy in 1945 and I was discharged from the Navy in December of '47.

Q. I see. So you were in the Navy about two years? A. Yes, sir.

Q. What was the nature of your assignment in the Navy?

A. That was—actually I never did obtain any significant rank. It was seaman, but I was striking for what they call shipfitter's helper. That's taking care of the water mains and steam pipes and so forth.

Q. Where had you done your Navy duty, Mr. Maynard?

A. Part of it in California and part of it in Washington.

Q. And the two years more or less that you were in the Air Force prior to this accident, where had you been on duty?

A. The majority of the part was in Japan.

Q. Had you made more than a single trip overseas? [60] A. That was the first time.

Q. This was your first return, at the time of the accident was your first trip back?

A. Yes, sir, to the States.

Q. Was your Navy duty all on land or was some of that on sea?

A. I was on one commissioned ship, but it was shortly after that decommissioned. Most of it was on land.

Q. I see. What was the type of work you were

(Testimony of Hufford Donald Maynard.)

doing in Japan in the Air Force just preceding the accident? A. It was supply records.

Q. Clerical work? A. Yes, sir.

Q. And that's the type of work you had done in the Air Force, is it, up to that time?

A. Yes, sir.

Q. Your Air Force experience then hadn't included any of the technical aspects of flying?

A. No, sir.

Q. You had not flown a plane or never had training of that kind? A. No, sir.

Q. So your observations of conditions at the time of this flight or in connection with this flight are not from a technical standpoint but just from the standpoint of [61] a layman? A. Yes, sir.

Q. In the course of your two years Navy experience and two years Air Force experience prior to the accident had you ever seen a life vest?

A. Have I ever seen one?

Q. Yes. A. Yes.

Q. In the course of your Navy experience and two years of Air Force training had you ever had any instruction on the use of a life vest?

A. Yes.

Q. Both in the Navy and the Air Force, didn't you? A. Yes.

Q. So you knew how to use one? A. Yes.

Q. Now, can you tell us, I didn't get clearly, just about when it was you left Tokyo on this flight?

A. What do you mean, about? Are you speaking—

(Testimony of Hufford Donald Maynard.)

Q. About what time of day?

A. I think it was somewhere around noon.

Q. And you had been en route how long, thirty-six hours, at the time of the accident, more or less, is that right?

A. Yes, sir, more or less. [62]

Q. The accident happened shortly after midnight, did it not?

A. Yes.

Q. Your last stop prior to the accident had been at Anchorage, Alaska, I believe. Is that correct, sir?

A. Yes, sir.

Q. And you got away from Anchorage that evening or afternoon about what time?

A. I don't know exactly from my own standpoint. I know this, that the sun was shining there in Alaska. I can't recall exactly what time it was.

The Court: When the accident happened?

A. No, sir, when we left Anchorage.

Q. (By Mr. Karr): In other words, when you left Anchorage preceding the accident it was still daylight?

A. Yes.

Q. The accident happened sometime after midnight the following day?

A. Yes.

Q. During that interval of six or eight or ten hours, whatever it may have been, were you awake at all times or did you sleep on the plane?

A. I don't recall whether I was or not. Possibly I may have catnapped.

Q. Well, up until the time of the accident after midnight [63] you had slept a good deal, hadn't you, Mr. Maynard?

A. Yes, I had.

Q. During the flight?

A. Yes, sir.

(Testimony of Hufford Donald Maynard.)

Q. So there may have been communications to the passengers by the crew members or by the stewardess that you might not have heard if you were asleep. Is that a fair statement?

A. If they had made any, yes.

Q. Now, as I understand it you weren't aware of anything unusual in the operation of the plane prior to the time it went in the water; is that right?

A. That's right.

Q. You later learned that it had been flying on three engines for a period of time approaching Sandspit? A. Yes, sir.

Q. Were you asleep when the plane landed at Sandspit? A. No.

Q. How long prior to the landing had you awakened, Mr. Maynard?

A. I don't know. I didn't say that I was asleep. I don't remember being asleep from Anchorage to the accident.

Q. You don't remember being asleep from Anchorage to the accident? [64] A. That's right.

Q. But you say you may have catnapped during some of that time? A. It's possible.

Q. Mr. Maynard, do you remember my taking your testimony a week or two ago here in Seattle?

A. Yes, sir, I do.

Q. Do you recall my asking you in the course of that testimony, "Had you been sleeping at all while you were on the flight?" and your answering me, "Oh, yes." A. Yes, I did sleep.

(Testimony of Hufford Donald Maynard.)

Q. But as the plane approached Sandspit, as I understand it, you were awake at that time?

A. Yes, sir.

Q. And you noticed nothing unusual in the flight of the plane? A. No, sir, I didn't.

Q. Or in its landing at the airport, there was nothing unusual in the landing?

A. That I knew of, no, sir.

Q. Now, from the time the plane touched down, Mr. Maynard, at Sandspit and then power was applied and it took off again, was there more than an interval of seconds before it hit the water?

A. What do you mean, more than an interval of seconds? [65]

Q. Well, was it more than just a few seconds from the time it took off from the Sandspit airport until the plane hit the water?

A. I would say it was about—I mean actually I don't really know how long it was, but it was a very short period of time.

Q. It seemed practically instantaneous, did it?

A. Pretty near so, yes.

Q. After the plane settled on the water, Mr. Maynard, I understand you undid your seat belt.

A. Yes, sir.

Q. The seat belts were fastened because the stewardess had advised the passengers in advance of the landing to fasten the seat belts?

A. Yes.

Q. And you were sitting near one of the emergency exits on the plane? A. Yes, sir.

(Testimony of Hufford Donald Maynard.)

Q. Who opened that door, Mr. Maynard, if you know?

A. I was attempting to help open the door myself.

Q. I see, and how long did it take to get the door open?

A. Just a matter of a couple of seconds.

Q. Who was first out the door, do you know? Were you?

A. I don't really recall. I was about the second one out.

Q. I see. So you weren't in the plane then very long [66] after it landed on the water?

A. No, sir.

Q. Now, at the time of the approach to Sandspit and the landing the stewardness was where in the plane, if you know?

A. I don't know, sir.

Q. You were up over the wing?

A. Yes, sir.

Q. Which more or less would be forward in the plane, is that right?

A. Yes, sir.

Q. She was to the rear some place from where you were, was she not?

A. I don't know.

Q. You don't remember. And between the time the plane landed on the water and you got the door open and out you didn't see the stewardess?

A. No, sir, I didn't.

Q. You don't know what she did or may have done to assist the passengers?

A. No, sir, I don't.

Q. I assume that the pilot and the co-pilot were in the pilots' cabin at the time of landing and at

(Testimony of Hufford Donald Maynard.)

the time of the accident? A. Yes, sir. [67]

Q. You said something about there being some light clouds, I think, at the time the plane landed. Am I correct in that, that there were light clouds or broken clouds at the time of the landing?

A. From looking out of the window you could see blots of clouds going by the aircraft.

Q. During the time you were on the wing, Mr. Maynard, before you were rescued, was it pitch dark or was the moon out, or just what was the condition?

A. It wasn't really pitch dark, but it wasn't a real bright moonlit night. You could see about from here to you, but it was just more or less of an outline.

Q. Do I understand the moon was out at times?

A. Yes, sir.

Q. Now, after you were rescued, Mr. Maynard, and left the wing of the plane and were taken into the house there at Sandspit, is it my understanding that a doctor saw you that same morning?

A. About ten o'clock.

Q. And I believe you said that he examined for broken bones or other injuries.

A. Yes, sir.

Q. And you had no broken bones?

A. No broken bones.

Q. I think you said you had a scratch, did you?

A. Yes, sir.

Q. Was that a minor matter? A. Yes, sir.

Q. It healed up in a matter of days?

(Testimony of Hufford Donald Maynard.)

A. Yes, sir.

Q. And you referred to a bruise. Was that something that cleared up in a matter of days?

A. Well, the bruise, sign of a bruise is still there, but it hasn't given me any trouble.

Q. Did that doctor see you on more than that one occasion, Mr. Maynard?

A. No, sir.

Q. And you were at Sandspit for about two days, as I recall.

A. Yes, sir.

Q. Now, during that two days were you confined to your bed the entire time or were you up and about part of the time?

A. We got up one time that I remember of. That was when the Canadian Mounted Police were questioning us, and other than that we had our meals in bed until the day that we left.

Q. You say you were up when the Canadian Mounted Police questioned you?

A. We got up then. [69]

Q. Did they assemble you all in a room, is that it, or something of that kind?

A. Well, the men, the seven of us—well, Lieutenant Baker and myself were in one room and the others were in different rooms. We had to go into—I believe it was the kitchen.

Q. Were you able to walk to the kitchen?

A. I could walk, but I wasn't very steady at it.

Q. But you did walk to the kitchen on that occasion, and then during that two days you were there at Sandspit were you able to walk back and forth to the bathroom?

A. Unsteadily, yes.

(Testimony of Hufford Donald Maynard.)

Q. When you left Sandspit, Mr. Maynard, I think you said you were driven to the airport by automobile. A. Yes.

Q. When you left the house there at Sandspit and went to the automobile did you walk out to the car?

A. The Canadian Royal Air Force or Canadian Air Force, they assisted us. There was a Canadian doctor there and his assistant, and they gave us these big flight boots to wear, all of us, and these clothes, and we hobbled out to the car with their assistance.

Q. I understand they gave you the flight boots, but do I understand you got out to the car under your own power? A. More or less, yes. [70]

Q. Now, at that time with reference to the condition of your feet, Mr. Maynard, there two days after the accident, they weren't very badly swollen then, were they, sir?

A. Yes, sir, they were.

Q. And as a matter of fact they weren't very much discolored even then, were they, right after the accident? A. Yes, they were.

Q. Do you remember again the deposition we took on the 7th day of March here in Seattle?

A. I remember the day, yes, sir.

Q. And your Counsel was there, was he not?

A. Yes.

Q. Do you remember I asked you about this same condition at that time?

A. I truthfully don't remember the question.

(Testimony of Hufford Donald Maynard.)

Mr. Karr: Page 25, Mr. Riley.

Q. (By Mr. Riley): At that time, Mr. Maynard, didn't I ask you, "While you were there at Sandspit were your feet and legs swollen enough so it was pretty obvious?" and didn't you answer me, "It was obvious to me. I don't know, maybe some people might not have noticed it." Did you tell me that? A. I guess I did.

Q. And didn't I say, "I see, and were they discolored at [71] that time?" and didn't you reply, "Well, kind of a bluish, reddish, whitish color—well, it wasn't really discolored." Didn't I say, "But it didn't look quite natural to you?" and you answered, "Right." And I said, "But not"—and you interrupted me and said, "Not technically."

The Court: Not what?

Mr. Karr: Technically.

Q. (By Mr. Karr): And my question was, "Not a great deal of difference from normal?" and you answered, "Right." Wasn't that what you told me about three weeks ago, Mr. Maynard?

A. I guess so.

Q. Now, from Sandspit you went to McChord Field, as I understand it. A. Yes.

Q. And the accident happened on January 19th. I suppose you got to McChord about the 21st, is that right? A. The 21st, 22nd, yes.

Q. And you were there, as I understand it, for three or four days.

A. I don't exactly remember how long we stayed there because they gave us some sleeping pills and

(Testimony of Hufford Donald Maynard.)

we went to sleep at the hospital and I lost—from that accident on till I left Oakland I more or less just [72] lost track of the days, but the best I remember, we got in there in the afternoon and the following night about nine o'clock or something like that they took us to—well, some airfield, to see if they had available military aircraft for us to go home. They took us all there, and I had to pay for my transportation from California to Alabama, and I caught the airplane that morning about six o'clock.

Q. Would this be roughly three or four days after you had arrived at McChord?

A. Yes, it would have been roughly that.

Q. As I understand, when you got to McChord you were put to bed. A. Right.

Q. And you were in bed for the period of time you were at McChord, or were you up and about part of the time?

A. They wouldn't let us get out of bed. We was in bed continuously until we left.

Q. I see, and what kind of treatment were you given there? I mean medical treatment.

A. We were given penicillin and pills, of what description I don't know. They were pills, and sleeping pills.

Q. I see, and bed rest, is that it? A. Yes.

Q. And when you left McChord then were you on your feet [73] and able to walk then?

A. Yes.

Q. I think you said you were wearing flight boots when you left McChord.

(Testimony of Hufford Donald Maynard.)

A. They were Arctic boots.

Q. Arctic boots, and you wore them, I believe you said, for two days after you got back to Jasper, Alabama.

A. Yes, sir.

Q. And you were home in Jasper about a week after the accident, is that correct, maybe a little less?

A. Yes, sir.

Q. You were home then for how long, Mr. Maynard?

A. Oh, approximately forty days. I had a thirty day leave and I got a fifteen day extension, which I allowed myself about five days to get back.

Q. Did you go to bed when you got home, Mr. Maynard, or were you up and about?

A. I got home about—the best I remember, somewhere around nine o'clock that night, and so I went to bed. There was no place else to go.

Q. I see, but what I meant was then the next morning did you get up?

A. Well, I stayed home all the time except when I went to the hospital to see my mother, which was only nine miles away. [74]

Q. Were you confined to your bed while you were at home, or were you——

A. Were I confined? No, sir, I wasn't confined to bed.

Q. Now, you say you went to the hospital to see your mother, which was nine or ten miles away?

A. It was nine miles away.

Q. Nine miles away, and how did you go there?

A. By automobile, car.

(Testimony of Hufford Donald Maynard.)

The Court: Where was that hospital?

A. That was in Russellville, Alabama.

The Court: Did Jasper have any hospital at that time?

A. Well, sir, he made a mistake. My home isn't in Jasper, it's in Spruce Pine, a little town.

Q. (By Mr. Karr): I'm sorry, I got mixed up. When you went home it was to Spruce Pine rather than Jasper? A. Yes, sir.

Q. I'm sorry. And then you went to Russellville to visit your mother who was in the hospital?

A. Yes, sir.

Q. And during the some forty days more or less that you were home did you visit her regularly?

A. Sometime I'd go one time a day, sometimes two, and sometimes I would—in fact, she only stayed in the hospital about three or four days after I got there. [75]

Q. Oh, I see. How did you get back and forth to the hospital? A. By car.

Q. Did you drive the car? A. Sometime.

Q. Did you say she was only there three or four days after you got to Spruce Pine?

A. Yes. You see, my dad can drive and my sister can drive, and we'd change up.

Q. Will you keep your voice just a little higher? I have trouble hearing you at times.

A. I say I couldn't say how many times I drove there.

Q. But you did drive the car back and forth to

(Testimony of Hufford Donald Maynard.)

the hospital after you got home while your mother was still in the hospital, did you, sir?

A. Yes.

Q. On more than one occasion?

A. I can't—yes, I'll say more than one occasion.

Q. During that period of forty days that you were home, Mr. Máynard, following the accident, I understood you to say you had some trouble with your feet and legs.

A. Yes.

Q. Did you have any medical attention at Spruce Pine?

A. No, sir, I didn't.

Q. Did you consult a doctor at all about that condition? [76]

A. No, sir.

Q. And when you were at the hospital seeing your mother did you consult a doctor under those circumstances about the trouble you were having?

A. No, sir.

Q. And I believe you said you returned to Japan about—when was that?

A. About two months afterward.

Q. Would it be around the middle of March of 1952, would it?

A. I guess.

Q. When you got back to Japan you went back to the same base, did you, where you had been staying before your leave started?

A. The same base.

Q. Did you return to the same duty you had had prior to the accident?

A. Yes, sir.

Q. The same assignment?

A. Same assignment.

Q. Same work?

A. Same work.

(Testimony of Hufford Donald Maynard.)

Q. And how long did you continue on that assignment then, Mr. Maynard?

A. Continuously till I left Japan. [77]

Q. And that was approximately when?

A. About two months before I got discharged from the Air Force.

Q. Does that make it the latter part of 19——

A. That was in the fall, yes, sir.

Q. Were you in Japan throughout the balance of 1952? You say you went back about the middle of March, something like that. Were you there for a full year or was it a year and a half?

A. It was about—it was less than a year when I went back.

Q. Less than a year. So it would be near the end of 1952 or early in '53 when you came back to the States, would it?

A. Yes, sir.

Q. During that nine months or a year that you were over in Japan following the accident did you have any medical treatment for the condition of your feet or legs?

A. No, sir.

Q. Did you consult a military doctor about it?

A. No, sir.

Q. You had a doctor there on the base, I suppose.

A. Yes, sir.

Q. Did you consult any civilian doctor on the subject?

A. In Japan you couldn't; you wasn't allowed to consult 'em. [78]

Q. So you had no treatment nor consulted anyone?

A. Yes, sir.

(Testimony of Hufford Donald Maynard.)

Q. During that nine months or a year, Mr. Maynard, that you continued in the Air Force after the accident, were you off duty at any time for medical conditions or were you on duty all the time?

A. I was on duty all the time.

Q. You didn't miss any time because of this condition? A. No, sir.

Q. You were discharged from the service at the end of that tour of duty, weren't you?

A. Yes, sir.

Q. Was your discharge for medical reasons or just a discharge because you finished your job?

A. My term of enlistment was up.

Q. I see. It was not a medical discharge?

A. No, sir.

Q. Now, after that term of service with the Air Force concluded I believe you said after a brief period at home you then went to work in Memphis, Tennessee? A. Yes, sir.

Q. And that was about when, Mr. Maynard?

A. About a week after I got discharged.

Q. Would that be in the late winter or early spring?

A. It was about the last of February. [79]

Q. Of 1953? A. Yes, sir.

Q. That would be then a little more than a year after the accident? A. Yes.

Q. I think you said you stayed on that job for something like nine months, — eight months, nine months, something like that?

A. Something like that.

(Testimony of Hufford Donald Maynard.)

Q. That was the place where you were working as a clerk in the warehouse? A. Yes, sir.

Q. In connection with putting up orders for the trade? A. Yes, sir.

Q. How much did you make in that employment, Mr. Maynard?

A. Seventy cents an hour, I believe it was.

Q. Seventy cents an hour, and what did you work? A. Pardon?

Q. What did you work, a forty hour week?

A. Forty-eight.

Q. A forty-eight hour week. During the period you worked in Memphis, Mr. Maynard, were you off work at any time because of medical condition, —physical condition I should say?

A. No, sir. [80]

Q. You didn't lose any time from your job because of physical trouble? A. No, sir.

Q. And during that period you were in Memphis when you were describing the pain and discomfort you felt, did you consult a doctor in Memphis about your trouble? A. No, sir.

Q. Did you have any treatment for your condition? A. No, sir.

Q. From Memphis I think you said you went to Ford Motor Company? A. Yes, sir.

Q. And that was in the latter part of 1953, right? A. Yes, sir.

Q. And where, by the way, did you go to work for Ford, in Detroit?

A. Actually it's in Dearborn.

(Testimony of Hufford Donald Maynard.)

Q. I see. Near Detroit?

A. Yes, sir. Well, there's just a street that separates the two cities.

Q. What kind of work did you secure there when you first went to work for Ford, Mr. Maynard?

A. It was a clerical job.

Q. The same general type of work you had been doing both in civilian work and military work?

A. Generally, yes, sir.

Q. Did the change in the weather going from the south where you had always lived up to Detroit, did that have any noticeable effect on your condition?

A. At that particular time?

Q. When you went to Detroit and started living there, or Dearborn, and started living there.

A. When I left the south to go to Michigan it was still warm weather, so there was no difference in it then.

Q. Well, what salary were you paid or wages were you paid at Ford, Mr. Maynard?

A. Count the cost of living and the first increase in pay was——

Q. I don't think you understood my question. What did you get paid when you went to work for Ford to begin with near the end of 1953?

A. \$1.96 an hour plus cost of living.

Q. \$1.96 an hour plus cost of living?

A. Yes, sir.

Q. That's when you started to work the first day?

A. (Witness nods his head.)

(Testimony of Hufford Donald Maynard.)

Q. And how long did you stay with Ford Motor Company before you went into the Marines?

A. Till they did away with the job.

Q. And that was about how long? [82]

A. That was about July, somewhere around the first of July, 19——

Q. July of 1954? A. Of '54, yes.

Q. So you were there roughly six, seven, eight months, right? A. Yes, sir.

Q. During that period of time had you had any increase in your wages?

A. Five cents—ten cents.

Q. I beg pardon? A. Ten cents.

Q. I see. Was it five cents on one occasion and ten cents on another? A. Yes, sir.

Q. Now, I think you said your legs and feet troubled you some while you were in Detroit.

A. Yes, sir.

Q. Did you consult a doctor for your condition while you were there? A. No, sir.

Q. Or the company doctor?

A. When I took the job—no, sir.

Q. Did you consult the company doctor?

A. No, sir. [83]

Q. Did you have any treatment for the condition you complain of while you were with Ford in Detroit? A. No, sir.

Q. During that eight or nine months during the early part of 1954 while you were working for Ford did you lose any time from work because of your physical condition? A. No, sir.

(Testimony of Hufford Donald Maynard.)

Q. You weren't off a day or an hour at any time? A. No, sir.

Q. I think you said that job terminated in June of '54, did you?

A. June or July. I don't remember what month.

Q. And did I understand that then you went into the Marine Corps? A. Yes, sir.

Q. You were pretty well covering all the services, weren't you. In the Marine Corps you were assigned as a radio technician?

A. Not originally. When you first go in they don't assign you to any specific type of job; they give you a general classification, say like in the electronic field or aviation field or what have you.

Q. When was it you enlisted exactly, Mr. Maynard, if you can tell us?

A. The 22nd of July. [84]

Q. 1954? A. Yes.

Q. That would be just two years and a half after the accident almost exactly, would it not?

A. Yes.

Q. And up to that time since you had seen a doctor at McChord Field near Tacoma you had had no medical attention or consulted no one about your legs and feet, is that correct, sir?

A. Yes, sir.

Q. And hadn't missed a day of work?

A. No, sir.

Q. Now, in applying to the Marine Corps did you have a physical examination at that time?

A. Yes, sir.

(Testimony of Hufford Donald Maynard.)

Mr. Karr: I believe the medical record of Mr. Maynard in connection with his Marine Corps service, or Army service, is in the Court's custody—oh, I guess I have it here. Would your Honor indulge me for just a moment?

The Court: Yes.

(Brief pause.)

Mr. Karr: Your Honor, I think I will lay that aside for the moment and return to it just a little later. [85]

The Court: You may.

Q. (By Mr. Karr): At the time you applied for admission to the Marine Corps and they took a medical examination, the doctor at that time asked you about your medical history and background, didn't he, Mr. Maynard?

A. I don't recall. Probably he did. I don't know, I can't say yes or no.

Q. And in connection with that subject he asked you about whether you had had any trouble with your feet, didn't he?

A. I honestly don't know.

Q. And you told him you hadn't, did you not?

A. In a situation like that the way you——

The Court: Just answer yes or no, please, and then if it is necessary to make your answer true and correct you may——

A. I don't know what I told him.

Q. (By Mr. Karr): And you were also asked if you had ever had any trouble with your legs, were you not? A. I don't know.

(Testimony of Hufford Donald Maynard.)

Q. You advised that you hadn't had any such difficulties in your life, didn't you?

A. I don't know.

Q. Now, there is a trade name for a medical they give you when you go into the Marine Corps, isn't there, called [86] pulhes? A. Yes, sir.

Q. The letters are p-u-l-h-e-s, is that right, sir?

A. Something to that effect. I know what you're talking about.

Q. Beg pardon? You know what I'm talking about, don't you? A. Yes, sir.

Q. And that's a part of the standard medical examination that is given to all recruits for the Marines and they have to pass that examination in order to become a U. S. Marine, do they not?

A. Yes, sir.

Q. And you were subjected to and passed that examination, right? A. Partially.

Q. Partially. Did you never complete it?

A. Yes, but it taken me some time to complete it.

Q. I see. Now, the first letter of the examination—the letters are p-u-l-h-e-s, are they not?

A. Yes, sir.

Q. The first letter "p" stands for physical capacity and stamina, does it not?

A. I think that's what it is.

Q. And you're given various tests to determine your [87] physical capacity and stamina before you are graded on that and passed as a Marine, are you not, sir? A. Yes.

(Testimony of Hufford Donald Maynard.)

Q. And you were subjected to all those tests and passed them, did you not, or you wouldn't have gotten overseas duty?

A. To get an overseas assignment you have to have a certain qualification on that test, but——

Q. That is, you have to be higher than minimum, right?

A. Well, you have to have 1 in all of them to have an overseas assignment.

Q. And 1 is what, the highest category you can get?

A. Yes, sir.

Q. And you got an overseas assignment, did you not?

A. Yes, sir.

Q. So you passed in the highest category in all six classifications in this Marine physical test, didn't you, Mr. Maynard?

A. No, sir, not right off.

Q. No, not right off, but you did qualify later for all of them?

A. Yes, sir.

Q. Which one didn't you pass completely on the first round?

A. Psycho.

Q. That's the last of the six letters, is it not?

A. Yes, sir.

Q. But the first one which stands for physical capacity and stamina, that's the capital P, you didn't have any trouble passing that, did you, sir?

A. No, sir.

Q. And the second one, the capital U, relates to upper extremities, does it not? That's what they use the U for. You passed that all right?

A. Yes, sir.

(Testimony of Hufford Donald Maynard.)

Q. In the 1 classification?

A. (Witness nods his head.)

Q. The third one, the L, stands for lower extremities, does it not? A. Yes, sir.

Q. And you passed that?

A. (Witness nods his head.)

Q. In the 1 classification? A. Yes, sir.

Q. And the H stands for hearing, and you didn't have any trouble there? A. No, sir.

Q. And the E stands for eyes, and you didn't have any problem there, I take it.

A. (Witness shakes his head.)

Q. The last letter is S and that stands for psychiatric, [89] in the Marine alphabet anyway.

A. Yes, sir.

Q. And that's the one that for a period of time you didn't pass the 1 classification but later you did? A. Yes, sir.

Q. And those were all necessary to have an overseas assignment which you got in the Marines?

A. Yes, sir.

Q. Now, to qualify as a Marine you had thirteen weeks of boot camp training at Parris Island?

A. Yes.

Q. That's the place down in North or South Carolina that we—— A. South Carolina.

Q. South Carolina, that we read so much about in the last year? A. Yes, sir.

Q. Is that the one, same one?

A. (Witness nods his head.)

Q. You didn't have Sergeant McCune, did you?

(Testimony of Hufford Donald Maynard.)

A. No, sir.

Q. During that thirteen weeks of boot camp in the Marines did you miss any of your duties or assignments because of physical condition?

A. I can't answer that. [90]

Q. Do you not know whether you completed the whole course and——

Q. You misunderstand me. There was times when I went to the hospital for the doctors to examine me, and whatever training that the other people had there I don't know. Do you understand what I mean?

Q. Yes, I understand what you mean. Well, I suppose that everybody who was going through the Marine camp was examined at the hospital by the doctors too, were they not? A. True.

Q. And you had your turn for medical examination like everybody else did? A. True.

Q. What I was getting at, sir, was your physical condition such at Parris Island that you weren't able to do any of the things you were assigned to do? A. No, sir.

Q. You did the whole job?

A. (Witness nods his head.)

Q. I assume that included a fair number of marches of the type that we have read about in the last year? A. No, sir.

Q. You didn't have any marches?

A. Yes, I had some. [91]

Q. Following your boot training for three

(Testimony of Hufford Donald Maynard.)

months at Parris Island I think you said you were sent to Camp Pendleton in California.

A. Yes, sir.

Q. And that's sort of a staging area before they sent the Marines overseas, is it not, sir?

A. Yes, sir.

Q. And you were there for what, thirty or sixty days? A. Somewhere around there.

Q. And from there you went to Japan again?

A. Yes, sir.

Q. And you were based where in Japan?

A. Camp McNair in Japan.

Q. And about when was it you went to Japan, so we'll get the sequence of events?

A. It was in the wintertime. I don't remember what month it was.

Q. Well, I think you went into the Marines in July of '54, so it would have been maybe four or five months later, something like that?

A. Yes, sir.

Q. The latter part of '54. And you were then on duty with the Marines in Japan for something over a year, is that right, sir? A. Yes, sir. [92]

Q. During that period of over a year of Marine duty in Japan did you miss any duty or were you off duty at any time because of your physical condition? A. No, sir.

Q. Never once?

A. I don't remember of it.

Q. Did you have any medical treatment while you were in the Marines because of the condition

(Testimony of Hufford Donald Maynard.)

of your legs or feet? A. No, sir.

Q. While you were there in Japan as a Marine I suppose you had hikes from time to time?

A. Yes, sir.

Q. They would last for an hour or two?

A. Some of them did, yes, sir.

Q. Sometimes they would last for a day or two, would they not?

A. The hikes themselves actually wouldn't last a day or two.

Q. But you would be out on that kind of a maneuver? A. Yes, sir.

Q. And you took part in all of them, did you, sir? A. Not all of them, no, sir.

Q. All that you were assigned to?

A. What do you mean by that? [93]

Q. You took part in any that you were ordered to take part in, did you, sir?

A. Yes, sir, that's right.

Q. The regular assignment?

A. Yes.

Q. You weren't excused from any because of the condition of your feet or legs?

A. No, sir.

Q. I think you said your discharge from the Marines was on the 21st of April, 1956. Is that right, sir? A. Yes, sir.

Q. And that was a regular discharge, not for medical reasons? A. Yes, sir.

Q. That's right, is it? A. Yes, sir.

Q. Then you returned to what employment?

(Testimony of Hufford Donald Maynard.)

A. Ford Motor Company. Actually to the employment office to get employment.

Q. I see, and you went to work for the Ford Motor Company and that would be in the spring of '56, roughly a year ago now, is that right?

A. Yes, sir.

Q. What kind of work did you do when you went back to Ford then after your two years in the Marines? [94]

A. It was clerical work.

Q. The same type of work you had been doing right along, is that right? The same general type, I mean.

A. Yes, sir.

Q. And what was your wage rate when you went back a year ago?

A. \$1.96-1½.

Q. Was that—well, I'm confused. I thought that had been your rate when you went there on your first period.

A. It was, but you see they had done away with that job that I had before.

Q. Oh, I see. You went back on the same scale you had been on before?

A. Yes, sir.

Q. And have you had increases since you returned a year ago in pay?

A. One.

Q. One, you say?

A. Yes, sir.

Q. How much has that been?

A. Five cents.

Q. Now, during the past year, or maybe it's only eleven months, since you returned before,

(Testimony of Hufford Donald Maynard.)

have you been absent from your job at any time because of your physical condition? [95]

A. No, sir.

Q. Have you had any time off?

A. I've taken time off, yes, sir.

Q. For pleasure or personal reasons?

A. Personal reasons, yes, sir.

Q. Not because of any physical trouble?

A. No, sir.

Q. Have you had any medical attention or treatment during the past year since you've been back with Ford? A. No, sir.

Q. Well, now, as a matter of fact you have been to a doctor for the past year, haven't you, because you had a cold once?

A. Well, I misunderstood the question.

Q. Is that correct? A. Yes, sir.

Q. But you haven't gone to a doctor because of any trouble with your feet or legs?

A. No, sir.

Q. But you did on one occasion see a doctor when you had a cold, is that right?

A. Yes, sir, but——

Q. Is that right?

A. Yes, sir, that's right.

Q. Now, I think you—— [96]

The Court: Pardon me just a moment, please.

Mr. Karr: Surely, Your Honor.

The Court: How long was it before you last returned to Ford at Detroit?

A. Almost a year, sir.

(Testimony of Hufford Donald Maynard.)

Q. (By Mr. Karr): And you worked there steadily up until the time you took a leave of absence to come out here, is that right, sir?

A. Yes, sir.

Q. Up until the last few weeks, Mr. Maynard, have you seen any doctor because of any trouble with your feet or legs since you left McChord Field in January, 1952, following the accident?

A. Yes, sir.

Q. O. K. Whom did you see?

A. I seen the Navy doctor when I was in the Marine Corps and I've seen Dr. Conwell in Birmingham, Alabama.

Q. Well, let's take them one at a time now. The Navy doctor, did he give you any treatment for your condition?

A. No, sir.

Q. He examined you, did he?

A. He looked at my legs and feet. He didn't make any test of any nature at all.

Q. He made a visual inspection, did he? [97]

A. Yes, sir.

Q. Had you take off your shoes and your pants?

A. Yes, sir.

Q. He examined your legs and your feet?

A. He looked at 'em, yes, sir.

Q. Felt them?

A. No, sir.

Q. And he gave you no treatment?

A. No treatment.

Q. I think you said that he said that there was nothing he could do for you?

A. Right.

(Testimony of Hufford Donald Maynard.)

Q. Now you say Dr. Conwell. What treatment did Dr. Conwell give you?

A. I asked him was there anything that he could do and he said no, there——

Q. Just a moment, please. Don't testify as to what he said. I asked you what treatment he gave you.

A. None.

Q. And he is located where?

A. In Birmingham, Alabama.

Q. You saw him when, Mr. Maynard?

A. In July or August of '56.

Q. That would be less than a year ago?

A. Yes, sir. [98]

Q. And did you go to him for treatment or because a lawyer down in Alabama took you to him?

A. Because a lawyer took me to him.

Q. What is his field of medicine, if you know, Mr. Maynard?

A. I don't know.

Q. He's a orthopedic man, is he not, or do you know that?

A. I don't know.

Q. Did you see him more than on just the one occasion?

A. One time.

Q. Now, what tests did Dr. Conwell give you, by the way?

A. Pardon.

Q. What tests did Dr. Conwell give you?

A. I don't know whether—he took X-rays, the blood pressure——

Q. He took X-rays?

A. Yes, sir. He put the blood pressure thing around my legs and he used his stethoscope to listen for pulse beat and felt with his hands.

(Testimony of Hufford Donald Maynard.)

Q. He's not a doctor you had ever seen before that occasion, I take it? A. Pardon?

Q. He is not a doctor who had ever treated you or cared for you at any time before that one occasion last June or July? A. No, sir. [99]

Q. And he has never seen you since?

A. No, sir.

Q. Now, since you have been here in Seattle the last week or ten days you have been examined by a Dr Sheridan on our behalf, have you not?

A. Yes, sir.

Q. What other doctors have you seen in Seattle, sir? A. I saw Dr. Crystal.

Q. That's Dr. Dean Crystal?

A. Yes, sir.

Q. Yes, sir. A. I've seen Dr. Ruuska.

Q. How do you spell his name?

A. R-u-u-s-k-a. And another doctor, but I can't remember his name right at the present time.

Q. Where is he located?

A. In the Medical-Dental Building down here.

Q. Did each one of them examine you?

A. Yes, sir.

Q. Would the third doctor whose name you have forgotten be Dr. Seering?

A. Yes, sir.

Q. Mr. Riley has just suggested that it is.

A. Yes, sir.

Q. All three then have examined you within the past week [100] or two? A. Yes, sir.

Q. In addition to Dr. Sherman?

(Testimony of Hufford Donald Maynard.)

A. Yes, sir.

Q. Sheridan, excuse me. A. Sheridan.

Mr. Karr: Your Honor, I have practically concluded my examination except that I have here some photostats which I have not previously seen. They have been in the Clerk's custody and perhaps I should have seen them, but I haven't, which I would like to look at for just a little while. They are so small they are a little hard for me to read. Am I a little too early for the afternoon recess?

The Court: No, the Court can have it now, but I ask you during that time to consider not only what you have just mentioned but also what further consideration you wish to give to the question of whether you will, when your cross examination of this witness is finished, proceed with whatever questions on direct examination you may wish to ask this witness as a part of the defendant's case in chief done out of order in order to accommodate this witness, which the Court now is very much inclined to direct be done.

Mr. Karr: Thank you, Your Honor. [101]

The Court: Court will be at recess for ten minutes.

(Short recess.)

The Court: All are present. You may proceed.

Q. (By Mr. Karr): Mr. Maynard, you referred to three doctors whom you have seen since you've been here in Seattle. Was Dr. Crystal the first one you went to? A. No, sir.

Q. Who was the first one you saw?

(Testimony of Hufford Donald Maynard.)

A. Dr. Ruuska.

Q. Ruuska?

A. Ruuska—or excuse me; your doctor.

Q. I see, was the first one, that was Sheridan?

A. Yes, sir.

Q. Then you went to see Dr. Ruuska?

A. Yes, sir.

Q. That was not on our behalf?

A. No, sir.

Q. Mr. Riley sent you to him?

A. Yes, sir.

Q. And after seeing Dr. Ruuska did he send you to Dr. Crystal? A. Yes, sir.

Q. Dr. Ruuska did? [102]

A. Yes, sir.

Q. They don't practice together?

A. No, sir.

Q. And then you saw Dr. Crystal, then who sent you to Dr. Seering?

A. Mr. Riley—no, Mr.—what was the question now again?

Q. Who sent you to Dr. Seering?

A. Mr. Riley.

Q. I see. Now referring, Mr. Maynard, to your medical record during the period of your service with the U. S. Air Force, and particularly to your medical history taken January 26, 1953, I call your attention to the date because it's a year following the accident, do you recall a medical examination while you were still in the Air Force at that time?

A. January when?

(Testimony of Hufford Donald Maynard.)

Q. 26th, 1953.

A. No, sir, I don't remember it.

Q. Where were you stationed in January of '53?

A. Montgomery, Alabama, I believe it was.

Q. I see, and do you recall that there was a medical examination at the time you left the Air Force or at about that time?

A. Yes. They were—I remember something about a medical examination, but I don't remember too much about it. [103]

Q. I see. Well, in that examination, Mr. Maynard, I'll ask you if you remember this examination a year after the accident, if they didn't ask you details about any physical disabilities you had. Do you remember anything about that at all?

A. I remember a form that they had that asked you did you have any specific types of illnesses and so forth.

Q. They go through a list of some fifty or sixty of them actually, don't they?

A. They don't go through it, no, sir. They give you a slip and——

Q. Oh, they give it to you and you check it off, is that right? A. Yes, sir.

Q. And you were given such a list at the time of the medical examination I'm talking about in January of '53, were you not, sir?

A. Yes, sir.

Q. And included in that list you checked off the fact that you had had the mumps and the

(Testimony of Hufford Donald Maynard.)

whooping cough and appendicitis, did you not?

A. Yes, sir.

Q. You were checking anything that you had had difficulty with, were you not, and those three you checked as something you had suffered from?

A. Yes, sir.

Q. In the list was the item of lameness and you checked that as not ever having had any trouble of that kind, did you not?

A. No lameness, no, sir.

Q. Well, you checked that as "No". They also included in the list that you checked either yes or no the item of foot trouble, and you said you had never had any foot trouble, did you not, sir?

A. Yes, sir.

Q. In addition to the list there was a series of questions that you answered yes or no, was there not? A. I don't actually remember it.

Q. Well, would this help to refresh your recollection: Was there not on the second page or the reverse side of the page——

Mr. Riley: I'm going to object at this point, Your Honor. I think Counsel should give the witness a copy of this thing and let him see it.

The Court: The objection is overruled.

Q. (By Mr. Karr): On the second page or reverse side of the first page of this medical examination, Mr. Maynard, were you not asked the question: "Have you had any illness or injury other than those already noted?" and you answered, "No", did you not, sir? [105]

(Testimony of Hufford Donald Maynard.)

A. I don't know what I answered. It's been too long ago.

Q. Did you not have this question asked you a year after the accident in January of '53: "Have you consulted or been treated by clinics, physicians, healers or other practitioners within the past five years?" and you answered, "Yes, tonsils in 1930 and appendix 1949." Wasn't that what you answered? A. Yes, sir.

Q. You didn't say anything about having had any treatment for leg or foot trouble a year before?

A. I didn't have any treatment for it a year before.

Q. I thought there was a doctor at Sandspit and another at McChord.

A. Not treatment for legs, no, sir.

Q. You were asked this question, were you not: "Have you treated yourself for illness other than minor colds?" and you answered, "No", did you not? A. Yes, sir.

Q. And you say you do not recall the question, "Have you had any illness or injury other than those already noted?" and you answered, "No", to that a year after the accident, did you not?

A. I don't recall the questions that were on the form. I remember filling out the form.

Q. You do recall in filling out the form you did not say [106] that you had had any injury in an accident a year before, did you? A year after

(Testimony of Hufford Donald Maynard.)

the accident you didn't say anything about having been injured?

A. I don't think I did. I don't remember.

Q. And at that time you hadn't brought a lawsuit either, had you, Mr. Maynard? You did that afterwards? A. Yes, sir.

Mr. Karr: Could this be marked for identification, Your Honor.

The Clerk: Defendant's Exhibit No. A-16.

(A photostatic copy of order was marked Defendant's Exhibit No. A-16 for identification.)

Q. (By Mr. Karr): Mr. Maynard, would you be good enough to take a look at what has been marked Exhibit A-16 and tell us whether or not that is not a photostatic copy of the order on which you came home from Japan on the flight in which the accident occurred? A. Yes, sir.

Mr. Karr: We offer it in evidence, Your Honor.

The Court: Admitted.

(Defendant's Exhibit No. A-16 for identification was admitted in evidence.)

Mr. Karr: May it please the Court, I have here a complete set of Mr. Maynard's medical service [107] record during the period of his Air Force enlistment. It was sent to us under the seal of the U. S. Army and it is a photostat, white on black. I understand that is not acceptable in this court, but I wonder if I——

(Testimony of Hufford Donald Maynard.)

cited an example where your testimony given to him in your deposition in his offices on March 7th pursuant to our agreement with him was in conflict with what you said this morning, and you stated in the deposition that your feet were discolored and you stated this morning that they were swollen and that they were discolored, but in the deposition you stated that they were discolored a little bit. Now would you tell the Court whether or not they were discolored and, if so, how they were discolored? [110]

Mr. Karr: May I have the citation in the deposition from which you are reading?

Mr. Riley: Page 25. I didn't read it.

A. They were swollen and they were discolored. I was belittling myself when I said what I did in the deposition, but as to exactly what extent they were swollen I couldn't say, only I know that they were swollen and I know that they bothered me, and that's all I can say.

Q. (By Mr. Riley): All right. While you were home at Alabama on your emergency leave you stated on cross examination that you had had no medical attention. Now, was there a reason why?

A. Yes.

Q. Would you state what it was?

A. Because I didn't figure that there was anything serious wrong with me, just that they were frostbitten from the cold water, and I figured that it would eventually go away and wouldn't bother me no more.

(Testimony of Hufford Donald Maynard.)

Q. At the time you went into the Marines do you have any reason why you did not tell them about your legs and feet? A. Yes.

Q. Would you state what reason you had?

A. Because at that particular time I was out of a job and [111] jobs were pretty hard to get, and I knew if I tried to go into the military service and I told them that I was bothered with my feet and legs, then they wouldn't more than likely ever have taken me in, and I needed some type of employment.

Q. You stated that when you entered the Marines that you were unable to pass the S portion, the psychiatric portion, of the pulhes test, and would you state why you were unable to pass that, what your trouble was?

A. That was because normally when I start talking about this accident I get emotionally excited and shook up and they thought I was a risk, possibly, from that.

Q. During your duty in Japan in the Marine Corps you stated that you didn't miss any ordinary duties. Did you ask for releases?

A. I asked for a release, yes.

Q. What happened?

A. They wouldn't release you from their hikes or field problems unless you had a medical excuse. They would tell you to stick it out, become a man with the Marine Corps, or something to that effect, the propaganda they have.

Q. Now, were you or were you not having

(Testimony of Hufford Donald Maynard.)

trouble with your legs during your service in the Marine Corps? A. Yes, I was. [112]

Q. In response to other questions, do you have any reason why you never quit work previous to the time you went back into the Marine Corps or at any time that—in other words, do you have any reason—you have stated that while you were working you were having difficulty with your legs in one particular job or another. Is there any reason why you didn't quit work because your legs were bothering you? A. Yes.

Q. And what is it?

A. Because if I was to quit work just because the legs were bothering me, how could I live? You've got to work to live.

Mr. Riley: I believe that's all.

Mr. Karr: Just a couple of questions, Your Honor, of Mr. Maynard.

The Court: You may do so.

Recross Examination

Q. (By Mr. Karr): As I understood you just now, you told Mr. Riley that the reason you didn't tell the U. S. Marine Corps that you had had any trouble with your feet or legs was because you wanted to get into the Marines.

A. Not specifically the Marine Corps, but in the service, [113] yes, sir.

Q. The service; and that jobs were scarce?

A. Yes, sir.

(Testimony of Hufford Donald Maynard.)

Q. But this was in June and July of '54, wasn't it, sir?

A. That I went in the Marine Corps?

Q. Yes. A. Yes.

Q. Jobs weren't very scarce then, were they?

A. Yes, they were, for my—I didn't have any skill or trade. I—

Q. How long were you out of work from the time you left Ford until you got into the Marines?

A. A couple of weeks.

Q. And that wasn't the reason that you told the Air Force in January of '53 that you hadn't had any injuries, was it, Mr. Maynard?

A. No, sir.

Q. You didn't have that explanation for telling them that then?

A. Not that particular one, no, sir.

Mr. Karr: That's all.

The Court: You may step down.

Mr. Riley: I renew my request, if Your Honor please, that this witness be excused at this time for the reasons previously stated. [114]

(There was a discussion with reference to excusing the witness.)

(The witness was excused from the witness stand.)

Mr. Riley: I'm ready to call Mr. Peterson at this time.

The Court: Let him come forward and be sworn as a witness. Can Counsel stipulate agreeably to themselves what is the correct corporate name of

this defendant? Sometimes it is named by one name and sometimes by another.

Mr. Karr: Well, Mr. Peterson will know.

ARTHUR T. PETERSON

called as a witness by plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riley): Mr. Peterson, would you state your full name for the record, sir?

A. Arthur T. Peterson.

Q. Where do you reside?

A. 1347 Southwest 175th, Seattle, Washington.

Q. Where are you employed, sir?

A. At Seattle-Tacoma Airport by Northwest Orient Airlines. [115]

Q. What is the correct name of the corporate body by which you are employed?

A. Northwest Orient Airlines.

The Court: Let the record show that.

Q. (By Mr. Riley): Is Northwest Orient Airlines and Northwest Airlines, Incorporated, one and the same?

A. To my knowledge, yes.

Q. They are not——

The Court: Do you mean by that so far as you know? A. Yes.

The Court: Or do you mean to say that you are absolutely certain that the affirmative is the answer to that question?

A. Well, let's put it this way: The name at one

(Testimony of Arthur T. Peterson.)

time was called Northwest Airlines, Incorporated. Today it is Northwest Orient Airlines.

The Court: Without the "Inc." or any other word, is that right?

A. That is correct.

The Court: You may proceed, Mr. Riley.

Q. (By Mr. Riley): What is your capacity at Northwest Orient Airlines, Mr. Peterson?

A. Manager of Northwest Airlines operations in the western region. [116]

Q. And what area is encompassed within the western region?

A. From Billings, Montana, to Seattle, to Honolulu, from Seattle to Anchorage to Shemya.

Q. How long have you been manager for operations for the western region?

A. Approximately four and a half years.

The Court: Four and a half?

A. That's correct.

Q. (By Mr. Riley): Who was your predecessor?

A. Mr. F. C. Judd.

Q. And where is he now?

A. St. Paul, Minnesota.

Q. And what is his title now?

A. Vice President in charge of operations.

Q. He is employed by Northwest Orient Airlines?

A. Yes, sir.

Q. Do you know whether or not Mr. Judd was the operations manager for the airline, for the defendant airline, for the western region during January, 1952?

A. Yes, he was.

(Testimony of Arthur T. Peterson.)

The Court: May I ask you, is there any other person named Judd known to you to have been during the last ten or fifteen years in an important official corporate capacity connected with the defendant's business? [117]

A. I don't quite understand you there. I——

The Court: Do you know as one having ever been connected in a prominent way with the corporate affairs of this defendant corporation other than this man Judd having the family name of Judd?

A. Not to my knowledge.

The Court: Is this the only man by the name of Judd who has had an important connection with it as a corporate officer?

A. He's the only one I know of.

The Court: You may proceed.

Q. (By Mr. Riley): Just what is your capacity, then? You have described it as manager of operations of the western region. Would you state what your duties and responsibilities are?

A. In brief, in charge of ship movements, personnel and stations in the various regions.

Q. Do you have a certain number of aircraft committed to your control?

A. No.

Q. How are the aircraft controlled in your region?

A. They are controlled by what we call ship routing out of St. Paul, Minnesota.

Q. Do you have particular aircraft based at any point in your system within the western region?

A. Not any specific aircraft. It might be

(Testimony of Arthur T. Peterson.)

wherever they might wind up on the particular end of their route.

Q. In your organization can you state who would be in charge in the western region or who would have been in charge in the western region in January, 1952, of the defendant company of the inspection of safety equipment in aircraft leaving from or arriving at the Seattle-Tacoma base for your airline?

A. We have inspectors at the Seattle-Tacoma Airport and inspections are performed due to so many hours that's been piled up on the airplane at its regular inspection periods.

Q. Could you state who in January, 1952, was in charge of the inspection of safety equipment at Seattle-Tacoma Airport?

A. Of safety equipment only?

Q. Yes.

A. At that time I believe it was Mr. Ed Pitcher.

Q. And what is Mr. Pitcher's title?

A. Well, let me correct that statement. Maybe that should be Mr. Ophsahl, Elvin Ophsahl.

Q. All right. What is Mr. Ophsahl's title?

A. Inspector in charge at the Seattle station.

Q. Are there in the Northwest Airlines procedures a fixed period of time during which or after the expiration of [119] which you are required to effectuate an inspection of the safety equipment installed in any particular aircraft?

A. Yes, sir.

(Testimony of Arthur T. Peterson.)

Q. Do you know what the standard is?

A. Offhand I can't answer that.

Q. Well, do you have any idea what it is?

A. Well, after so many hours or after each trip, but I'm not positive on that.

Q. Do they inspect it just for placement to see if it's there or do they actually have tests to see that it's working?

A. They test to see that it's properly working. Now, whether that's after——

Q. Who would be in charge of your maintenance at your Seattle base in the western region—correction, at the Seattle base?

A. Ed Matthews.

Q. Was he in charge in January of 1952?

A. Yes, sir.

Q. Would you tell me about the functions of a flight superintendent or a flight controller?

A. The functions of him?

Q. Yes, sir.

A. In clearing flights from one point to another under [120] the regulations of the CAA and company regulations.

Q. In the event of a three-engine operation and engine out operation are there any particular promulgated regulations in your airline which place a particular or peculiar burden upon the flight controller on duty at that particular time?

A. No. At—in 1952 or at the present time are you speaking of?

Q. Well, I'll say in 1952.

(Testimony of Arthur T. Peterson.)

A. Well, there has been some change in that regulation. In 1952 a pilot was to land at the next scheduled field. Today a pilot can proceed to wherever he thinks is the safest operation. He don't have to land at the particular next airport because of three-engine operation.

Q. What is a scheduled field?

A. Pardon?

Q. What is a scheduled field?

A. Well, when I said "scheduled", a field that is called as an emergency field along our route.

Q. In fact, in 1952 wasn't the air controller or flight superintendent supposed to consult with and advise the pilot as to the nature of the emergency, the point of intended landing or proposed landing and such things as that? [121]

A. In a case of that nature at that time, as I recall the regulation the pilot was to land at the next appropriate airport, which I believe he done at that time.

Q. I understood you to say that a scheduled field is an emergency field.

A. No, I didn't say that. If I did, I didn't mean it.

Q. You stated that a pilot could proceed in a three-engine operation without further clearance to a scheduled field.

A. Well, to any airport that he felt was a safe operation.

Q. To any airport that he felt was a safe operation. Is that an emergency field or isn't it?

(Testimony of Arthur T. Peterson.)

A. It could be either.

Q. Is that included in an emergency field?

A. It could be either.

Q. It could be either. Under ordinary circumstances even in 1952 would it not be the better practice and isn't it a fact that flight controllers or air controllers would communicate with the pilot to determine the nature of the emergency to consider various alternative points of landing?

Mr. Koch: Your Honor, that question is very leading. [122]

The Court: The objection is overruled.

Mr. Riley: I'll ask the reporter to read the last question.

The Court: Very well.

(The reporter read the last question.)

Q. (By Mr. Riley): Do you understand the question, sir?

A. Yes, but he necessarily maybe wouldn't wait for the dispatcher's decision because at that time I believe it was already spelled out in the CAA regulations that he must land at the next field.

Q. Are you testifying that he must land at the next field?

A. I believe that's what the regulations called for.

The Court: Now, Counsel, there has come up the objection as leading. You have called this witness in the status of a plaintiffs' witness, and in that status you are not entitled to cross examine him. You may proceed.

(Testimony of Arthur T. Peterson.)

Mr. Riley: I appreciate that, your Honor. Of course, he is a principal employee of the defendant corporation and I'm considering him as an adverse witness.

The Court: You have called him as Plaintiffs' witness and that is his status, which does not entitle you to cross examine him.

Mr. Riley: Will your Honor bear with me [123] for a moment? I was looking for a document.

The Court: Yes.

(Brief pause.)

Mr. Riley: Well, I'll pass it for a moment.

Q. (By Mr. Riley): Mr. Peterson, does your company currently operate leased aircraft?

A. Do they currently operate?

Q. Yes.

Mr. Koch: I object to that, your Honor. I can't see the relevancy of that inquiry at this point.

The Court: The objection is overruled.

Q. (By Mr. Riley): You may answer.

The Court: I wish Counsel would make sure where the co-counsel and associate counsel are attending the trial that you make a definite arrangement between you that if one of the Counsel wishes to handle the witness in so far as his side's examination is concerned in any part the Court directs that the arrangement be made for him to handle it in all parts, stating objections as well as asking questions.

You may proceed.

It is quite agreeable to the Court for either Coun-

(Testimony of Arthur T. Peterson.)

sel to interrogate the witness or to take over the work in connection with any one witness, but [124] I wish the same Counsel to do all of it.

You may proceed.

Mr. Riley: Would you repeat the last question, Mr. Reporter.

(The reporter read the question as follows: "Mr. Peterson, does you company currently operate leased aircraft?")

A. I can't answer you that question.

Q. (By Mr. Riley): You have had experience in operating leased aircraft?

The Court: Your question should be more specific.

Q. (By Mr. Riley): Have you had experience in leasing aircraft from other airlines?

A. I personally haven't had experience in leased——

The Court: You used the word "you".

Q. (By Mr. Riley): Has the airline during the time you have been operations manager for the western region leased aircraft and operated them from the Seattle base?

A. I believe they have.

Q. Do you know whether or not the airline has any procedure for standardizing the configuration of leased aircraft with those already in the [125] Northwest Airlines system? A. Yes, they do.

Q. And do they do that?

A. You mean make some changes in the config-

(Testimony of Arthur T. Peterson.)

uration of the airplane to comply with the present airplanes that they might own at that time?

Q. Yes, sir.

A. They do make some changes, yes, and things of important nature they would bulletin the personnel accordingly.

The Court: Would not this be a good point to let the witness explain in the record the meaning of that phrase? It seems to be a word of magic in this connection, possibly.

Q. (By Mr. Riley): When I use the term "aircraft configuration" do you understand what I mean, Mr. Peterson?

A. Well, I presume that you mean, oh, an instrument or the way a certain thing operates in the airplane that might be different from our present fleet that we're operating that's owned by Northwest Airlines.

Q. Yes. In this regard would the procedure which you have just mentioned provide for the inspection of the cabin areas, interior areas, to see that the seating arrangements and the placement of [126] life vests and life jackets and life rafts are in the spaces, similar spaces as your regular fleet of aircraft?

A. They would be in the same place or a bulletin informing the people where they are located.

Q. Under ordinary circumstances then this would be accomplished?

A. Under any circumstance.

The Court: What is there, if anything, about

(Testimony of Arthur T. Peterson.)

those words and about that explanation you have made or as stated in Counsel's question which is that situation of configuration referred to by you?

A. Well, in some airplanes——

The Court: No, those words, those phrases that were in that explanation in answer to the last question.

A. Riley was talking about—Mr. Riley was talking about the cabin and I was talking about the cockpit.

The Court: Where does this configuration fit in and what does it mean to you? You define it. Tell us what you understand is meant properly by the use of that word.

A. Well, I would say the cabin, the interior, the seats arrangement, where the equipment is in the cabin of the airplane. I think that's what Mr. [127] Riley is referring to.

The Court: What do you refer to when you use the term "configuration" in this trade?

A. That's what I was referring to.

The Court: You may proceed.

Q. (By Mr. Riley): Mr. Peterson, would you tell us what arrangements and what procedures are used by Northwest Orient Airlines for controlling aircraft engine time and aircraft flight time in order to assure that the particular engine components and the engine and the airframe do not exceed the maximum permissible times permitted by Civil Aeronautics regulations?

(Testimony of Arthur T. Peterson.)

A. That is all handled by our office called Ship Routing in St. Paul.

Q. Would you describe in general how the times are accumulated and recorded?

A. From the log book, the hours that the airplane has flown is sent in to St. Paul and kept a daily tally on the airplane and various engines, and so forth, that tallies are kept on.

Q. How are you to know here whether or not an aircraft has exceeded the time permitted for flight?

A. Has exceeded?

Q. Yes, if it has.

A. Ship Routing is the one that routes the [128] airplane and that controls the hours of the airplane.

Q. Are you advised by them——

A. I'm not advised. They——

Q. I mean by "you", is the station here at Seattle advised? A. Yes.

Q. So that officially or unofficially one of your juniors or one inferior to you is advised; one who is responsible to you, I should say, is advised, presumably?

Mr. Koch: I object to the form of the question, your Honor. If he's asking for information he shouldn't be telling the witness what to say yes to.

The Court: The objection is sustained. State a clear question.

Q. (By Mr. Riley): Just tell us, Mr. Peterson, by what method or to whom is the information relating to the flight time of a particular aircraft and its engines forwarded here to Seattle.

(Testimony of Arthur T. Peterson.)

A. It's forwarded to the flight dispatcher office and the maintenance to Mr. Matthews' office.

Q. Is the Seattle station equipped to make engine changes and major repairs on aircraft?

A. Yes, sir.

Q. Is this a common occurrence, engine changes?

A. Yes. [129]

Q. If an engine is received—are all of your engines overhauled in your own system? By using the second person I mean Northwest Airlines, of course.

A. Yes.

Q. In the case of a leased aircraft or a leased engine or an engine overhauled by an agency other than Northwest Airlines and received by your station here, what means are taken to ascertain the amount of flight time on that particular engine?

A. That would come through our Ship Routing out of St. Paul.

Q. If an engine after top overhaul was shipped to you, for instance, from Transworld Airlines, to whom would the advice of the remaining engine time or the existing engine time be forwarded?

A. I assume that it would have come through the same pattern as it does today, but I can't answer you that because I had nothing to do with it.

Mr. Riley: I would like to have this marked for identification.

The Court: It may be so marked.

The Clerk: Plaintiffs' Exhibit No. 12.

(A portion of Northwest Orient Airlines op-

(Testimony of Arthur T. Peterson.)

erations manual was marked Plaintiffs' Exhibit No. 12 for identification.) [130]

The Court: Does that paper have a name, Mr. Peterson?

A. It's a——

The Court: Can you describe it with a one word name?

A. It's a mechanical reference from the Mechanical Division.

The Court: Do Counsel know a name that fairly reflects the nature of the information contained in the document?

Mr. Riley: Yes, your Honor. This is taken from the Northwest Airlines manual.

The Court: I do not know whether it was or not, but what kind of a thing is it as characterizing the kind of information in it?

Mr. Riley: It describes——

The Court: What is it? Give it a name.

Mr. Riley: It is a portion of the Northwest Airlines operations manual and it refers particularly to the cabin configuration of DC-4 type aircraft, and the manual——

The Court: You may proceed. I thought there would be a one word name. Proceed. Ask the witness.

Q. (By Mr. Riley): The document handed to you marked Plaintiffs' Exhibit 12, Mr. Peterson, [131] can you tell the Court what that consists of?

A. Well, the subject on this sheet is Emergency and Special Equipment.

(Testimony of Arthur T. Peterson.)

Q. Do the diagrams there—let me ask you this first of all: Does the Northwest Airlines operations manual provide in it the configuration and relating particularly to DC-4 type aircraft, does it provide the configuration for the cabin interiors of DC-4's with relation to the location of lifesaving equipment and survival equipment? A. Yes.

Mr. Koch: Your Honor, I—

Q. (By Mr. Riley): Does that portion which you have before you contain that information?

Mr. Koch: Before the witness answers, your Honor, I would object to questions relating to the contents of an exhibit that is not in evidence.

The Court: The objection is overruled. The Court understands the question to relate to the character of the information in it rather than to state what it is, and that is the reason for the Court's ruling. Do not give the information which is stated in the exhibit. It is only permissible for Counsel to inquire and for you to answer what kind of information is in it. Proceed, Mr. Riley, by asking proper questions. [132]

Q. (By Mr. Riley): Mr. Peterson, does that portion of the manual before you provide the configuration of DC-4 type aircraft in Northwest Airlines operations for the placement of seats, life rafts and life vests?

A. It does at this particular time, but its outlined of May 16, 1951.

Q. That was effective on May 16, 1951?

A. That is true.

(Testimony of Arthur T. Peterson.)

Q. Yes. A. In this particular aircraft.

Q. Very well.

Mr. Riley: I wish to offer the exhibit in evidence, if the Court please, and before taking it from Mr. Peterson I would like to ask him some further questions relating to the exhibit.

Mr. Koch: Your Honor, I have no objection to the exhibit as such but I question, in view of the fact that this witness has testified that he is in the operations division, that an exhibit relating to inspection and maintenance is properly within his knowledge, and that question hasn't been asked, if he is familiar with it.

The Court: The objection is overruled. Plaintiffs' Exhibit 12 is admitted. [133]

(Plaintiffs' Exhibit No. 12 for identification was admitted in evidence.)

Q. (By Mr. Riley): Now referring to Plaintiffs' Exhibit 12, Mr. Peterson, will you tell me where in the aircraft cabin in DC-4 type aircraft life rafts are supposed to be stowed in your system, in Northwest Airlines system?

A. Well, the only thing that I can tell you is what I could read from this.

Q. Yes, sir, I understand.

The Court: Do not do that.

Mr. Riley: I wish to ask——

The Court: He cannot read the contents of the exhibit unless you ask him to read the exhibit. It being admitted, you may ask him to read it or some part of it.

(Testimony of Arthur T. Peterson:)

Mr. Riley: Yes, your Honor. He has to interpret——

The Court: If he does otherwise, he is testifying twice. If you wish him to read some part of it, direct his attention to what part and proceed in that manner.

Mr. Riley: It's a diagram, your Honor, and I believe he has to interpret it. That was my problem in phrasing that question. [134]

Q. (By Mr. Riley): Would you read the diagram please, Mr. Peterson, and tell us where it states the life rafts should be stowed in a DC-4 type cabin?

A. May I ask you a question? Why can't this question be asked of people that are fully familiar with this?

The Court: That question is not in order, Mr. Peterson, and Counsel may proceed to interrogate the witness.

Mr. Riley: Would you repeat the last question please, Mr. Reporter.

(The reporter read the last question.)

The Court: Do you want him to state the place on the physical thing where you can look and see or where anyone else can look and see these statements you mentioned, is that what you are asking the witness to do?

Mr. Riley: I'm asking him to read the diagram, if your Honor please, and read what it says as to the placement of the rafts.

(Testimony of Arthur T. Peterson.)

The Court: If that is what you mean, so word your question and let the witness proceed.

A. Well, to start with, in the forward part of the airplane, according to this diagram, the cabin attendants' life vests are under their seats. The ditching rope——

The Court: The ditching what? [135]

A. Rope, r-o-p-e, is in the door entrance of the airplane. The life rafts or overland survival kit is forward of the passenger entrance door. The passenger life vests, two in a rack, are stored over each double seat in the airplane. The crew's life vests are stored in back of the crew, according to this diagram, and there is also a ditching rope in back of the crew cockpit.

Q. (By Mr. Riley): All right. Does Exhibit 12—would you read Exhibit 12 and read the parts which indicate the effective date of that order and when, if it shows it was superceded or cancelled?

A. This bulletin was issued effective September 11, 1951, and superceded May 16, 1951. It was effective September 11, 1951, and it was superceded May 16, 1951.

Q. Well, if it was effective September 11, 1951, how could it have been superceded May 16, 1951?

A. I'm reading what it states here. It was issued effective at once September 11, 1951, and it says, "Superceded May 16, 1951."

Q. Would you look at the rest of the document and see if there are any other markings as to the effective date, in the front of the document?

(Testimony of Arthur T. Peterson.)

A. The front of the document here on Page 1 it says, "Issued effective December 7, 1951."

Q. Is it marked as having been superceded?

A. "Superceded October 18, 1951." What I was reading before was from Page 7. This is Page 1.

Q. Yes, sir. Do you know what that means, how it could — do you know what it means or how it could possibly be superceded by an earlier date when it was effective at a later date?

A. All I know is what it says. It could be a typographical error.

Q. All right.

The Court: Is there anything on that document to indicate what part of it was in effect, if any was in effect, on the day of this accident?

A. Which was in effect the day of the accident?

The Court: Yes. Look the entire exhibit over throughout the several pages. The date of the accident is said to be January 19, 1952.

A. Well, there's nothing in here that I can see except that it was superceded on this particular page, on Page 7, May 16, 1951, and there must be a later issue for the manual than what this sheet calls for.

Q. (By Mr. Riley): Now you're reading "superceded". Isn't that in fact "supercedes"?

A. Or "supercedes", yes. [137]

Q. "Supercedes", isn't that right? A. Yes.

Q. It doesn't mean that this particular document was superceded on an earlier date then, does it?

(Testimony of Arthur T. Peterson.)

A. That is correct. It was issued and supercedes May 15, 1951. So this would be in effect.

Q. I see. Very well.

The Court: On what date?

A. May 16, 1951.

The Court: State, if you know, was that in effect on January 19, 1952?

A. I assume that this was in effect at that time.

Mr. Riley: I have no further questions from Mr. Peterson.

The Court: May I suggest to defendant's Counsel that if you intend to call this witness as a defendant's witness, won't you please have that in mind in determining what and how many questions you may ask him now on cross examination?

Mr. Koch: Yes, your Honor.

The Court: You have the right to ask him about anything about which he has been questioned by Mr. Riley, of course, but even though you do have that right, have in mind this other consideration which I ask you to consider. [138]

Cross Examination

Q. (By Mr. Koch): Mr. Peterson, as manager of operations does the inspection of emergency gear and equipment and the location of that gear and equipment in the aircraft fall within your area of control? A. No.

Q. Is Mr. Ophsahl, who you testified was the inspector in charge of safety equipment an em-

(Testimony of Arthur T. Peterson.)

ployee who is one of your subordinates, is he in your department?

A. He comes under the operations department, yes.

Q. Does Mr. Matthews, too? A. Yes, sir.

Q. What does the operations department encompass in Northwest Orient Airlines in Seattle? Is everything at Seattle-Tacoma air base of Northwest Airlines under your control?

A. At the airport.

Q. At the airport? A. Yes.

Q. Do you have personal familiarity with the inspection procedures? A. Somewhat. [139]

Q. Are you familiar with the general location of emergency gear in DC-4 planes apart from your examination of Plaintiffs' Exhibit 12?

A. Somewhat.

Q. Are you generally familiar with the maintenance procedures that occur in connection with overhauling and maintaining aircraft at the Seattle-Tacoma base of Northwest?

A. That isn't my responsibility, but I'm acquainted with some of it.

Q. You have a general knowledge of it?

A. That is right.

Mr. Koch: May I see Plaintiffs' Exhibit 12 please?

The Court: You may.

(The exhibit was handed to Mr. Koch.)

Q. (By Mr. Koch): Are the specific procedures that a pilot is required by company regulations

(Testimony of Arthur T. Peterson.)

and Civil Aeronautics Administration regulations to take in the event of a three-engine operation on a four-engine aircraft matters within your area of control and supervision?

A. Are you speaking of today or of 1952?

Q. I'm speaking of January 19, 1952.

A. I can't answer you that. [140]

Q. I'm referring to the questions that plaintiffs' Counsel asked you relating to steps to be taken by the pilot in landing in emergency or other airfield facilities when he lost one of his engines and landed as he did in this case, and you were testifying with regard to emergency airfields and suitable facilities, and I wondered if this was something of which you had general knowledge or were quite conversant.

A. Well, as I say, it depends what dispatch, weather conditions that they might be operating under at the present time, where the pilot and the dispatcher decides which is the most safe operation, whether he proceeds to the next airport or he continues to Seattle, Washington.

Mr. Koch: I have no further questions.

The Court: Anything further of this witness?

Mr. Riley: No, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Riley: Call Mr. Pitcher.

The Court: Mr. Pitcher, please come forward and be sworn. [141]

EDWARD K. PITCHER

called as a witness by plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riley): Mr. Pitcher, would you state your full name for the record, please?

A. Edward K. Pitcher.

The Court: J.? A. K.

Q. (By Mr. Riley): And where do you reside, sir? A. 1627 South 158th, Seattle.

Q. By whom are you employed?

A. Northwest Airlines.

Q. What is your capacity there, sir?

A. Supervisor of equipment service.

The Court: Equipment and service, or——

A. Supervisor of equipment service.

Q. (By Mr. Riley): What are your duties as supervisor of equipment service?

A. I have charge of the loading, the ground service of the aircraft, such as cleaning and supplying.

Q. And with what do you supply the aircraft?

A. With all the items necessary for the flight, for the stewardess and passenger comfort. [142]

Q. All right. What are all the items necessary for flight in a particular aircraft?

A. That's about everything from safety pins to towels.

Q. Would that include ditching folders in the aircraft?

A. That would include the literature, yes.

(Testimony of Edward K. Pitcher.)

Q. Were you in this capacity in January of 1952? A. I was.

Q. Are you familiar with the crash of Flight 324 of Northwest Airlines on January 19, 1952?

A. Yes.

Q. Do you know whether or not that aircraft was supplied with ditching folders when it left Seattle for its trip to Japan and back?

A. It was.

Q. Was the aircraft supplied in Seattle with ditching folders for a round trip?

A. It normally would be supplied for a round trip, yes, sir.

Q. That would be normal procedure?

A. Yes, sir.

Q. And do you know whether or not it was?

A. I didn't personally check the airplane, but I believe it was.

Q. Did you investigate later to ascertain whether or not it was? [143] A. I did.

Q. And did you ascertain that it had been?

A. Yes, it was.

Q. How did you ascertain that?

A. I checked with the crew that had worked on the airplane.

Q. Who was that crew?

A. I don't recall the shift at the time, but the crew chief, the equipment service chief was Mr. Wean.

Q. Do you know what Mr. Wean's full name—do you know Mr. Wean's full name?

(Testimony of Edward K. Pitcher.)

A. I believe it was Bert Wean.

The Court: How do you spell the surname of that man?

A. W-e-a-n.

Q. (By Mr. Riley): Does he still work for the airline? A. No, sir, he does not.

Q. Do you know where he is now?

A. I do not.

Q. Do you know when he quit working for the airline?

Q. No, I couldn't give a definite date. It seems to be three——

Q. Do you know why he quit working for the airline? A. Three or four years.

Q. Do you know why——

A. He wasn't under my supervision at the [144] time he terminated. I don't know the exact reason on that.

Q. Do you know what difficulties he had, if any, when working for the company?

Mr. Koch: I object, your Honor, as completely irrelevant to the issues in this case.

The Court: The objection is overruled.

Mr. Koch: What was the last question, Mr. Reporter?

The Court: Read it.

(The reporter read the last question.)

Mr. Koch: The witness has already said that he wasn't under—this man wasn't under his supervision and that he is no longer with the company.

(Testimony of Edward K. Pitcher.)

The Court: The objection is overruled. The witness may answer the question.

A. What difficulty I had with him?

Q. (By Mr. Riley): No, what difficulty he had when he worked for the company, if any.

Mr. Koch: It's leading also, your Honor.

The Court: I do not recall that anyone has testified that he had any difficulty. Do you?

Mr. Riley: I'll phrase it differently.

Q. (By Mr. Riley): Do you know whether or not he had any difficulty——

The Court: The question is withdrawn. Draft another one. [145]

Mr. Riley: I will, Your Honor.

Q. (By Mr. Riley): Do you know whether or not Mr. Wean had any difficulties, personal, or otherwise, when working for the company?

A. By that do you mean home trouble, or——

Q. Was he ill? A. No.

Q. Was he an alcoholic?

A. Oh, he got stewed occasionally, I guess, on his own time. Not when he was working.

Q. Well, would you say yes or no whether or not he was an alcoholic?

Mr. Koch: I object to the question, Your Honor.

The Court: The objection is overruled.

A. I couldn't answer that either way. I couldn't say he was an alcoholic.

Q. (By Mr. Riley): Can you say whether or not he drank a lot or a little?

(Testimony of Edward K. Pitcher.)

A. Well, he had periods when he'd drink quite a bit, he'd be absent from work.

Q. Did he ever come to work under the influence of alcohol that you know of?

A. Not that I know of. [146]

Q. Did he ever come to work after he had been drinking that you know of? A. Yes.

Q. Were the effects apparent?

A. No. If they had been I'd have sent him home.

Mr. Koch: I didn't hear the answer.

The Court: "No. If they had been I would have sent him home."

Q. (By Mr. Riley): Were you there at all times that he worked? A. No.

Q. How many crews do you have under your control for inspection of the aircraft, Mr. Pitcher?

A. At that time I had——

Q. At that time.

A. At that time I had three crews.

Q. Are you familiar with those portions of the—are you familiar with the Northwest Airlines operations manual? A. Fairly.

Q. Are you required in your work to consult the manual?

A. Yes, a certain portion of the manual.

Q. Do you know whether or not the manual prescribes the location and configuration of DC-4 type aircraft relating specifically to the placement of life rafts and life vests? [147]

A. Yes.

(Testimony of Edward K. Pitcher.)

Q. Is it a function of your—is it one of your functions to determine that the aircraft which your crews inspect are in conformity with the Northwest operations manual?

A. It's not our duty to inspect the aircraft. That comes under the Inspection Department.

Q. I see. Do you determine that the equipment is in the aircraft?

A. It's not our duty to do that, no.

Q. Well, do you?

A. Well, as a matter of course we do. We see that the equipment is there. If it isn't we'd start hollering about it, but it's not our primary job.

Q. Whose duty is it?

A. The installation of the rafts and lifesaving equipment is a mechanical function. It's done by the mechanics. It's inspected by the Inspection Department. We provide the literature necessary for the type of airplane.

Q. And you ascertain that the literature then is in conformity with the aircraft?

A. That's right.

Q. I see.

Mr. Riley: Now may the witness see Plaintiffs' Exhibit 12. [148]

The Court: It will be shown the witness.

(The exhibit was handed to the witness.)

Q. (By Mr. Riley): Is what you have before you a portion of the Northwest Airlines operations manual? A. Yes, it is.

Q. Does that portion or does any portion of

(Testimony of Edward K. Pitcher.)

the portion you have before you indicate the configuration for cabin interiors relating specifically to the location of life rafts and life vests for DC-4 type aircraft of Northwest Orient Airlines?

A. Yes, it does.

Q. Would you look at the diagrams there and indicate where the life rafts should be placed in DC-4 type aircraft?

A. There's three different types here. They are all generally in the location of the main cabin door.

Q. Are they forward or aft of the main cabin door?

A. Well, on one of them here it's directly across from the main cabin door.

Q. Would you state that again please, sir?

A. On this one here it's directly across from the main cabin door.

Mr. Riley: At this time I ask, Counsel has been subpoenaed to produce the type of literature that was installed in the aircraft at the time of the crash [149] and I believe he has it here and I'd like to have it marked for identification and so identified.

The Court: That may be done.

The Witness: There's two of them here that are forward of the cabin door.

Q. (By Mr. Riley): Would you state that again, please?

A. There are two of them that are forward of

(Testimony of Edward K. Pitcher.)

the cabin door and one of them directly opposite the cabin door.

The Clerk: Plaintiffs' Exhibit No. 13.

(Flight literature was marked Plaintiffs' Exhibit No. 13 for identification.)

Mr. Riley: I offer Plaintiffs' Exhibit 13 in evidence, if Your Honor please, the exhibit having been identified or supplied to us as literature which was installed in the aircraft at the time of the crash.

Mr. Koch: No objection, Your Honor.

The Court: Admitted.

(Plaintiffs' Exhibit No. 13 for identification was admitted in evidence.)

The Court: At this time we will take the overnight recess in the trial. What would you call that paper, Plaintiffs' Exhibit 13?

A. They are called the ditching folder or emergency folder.

The Court: Ditching folder? [150]

A. Ditching folder is what they call it.

The Court: Will you return in the morning at ten o'clock, Mr. Pitcher, and you may step down at this time. Court is adjourned at this time until tomorrow morning at ten o'clock.

(Thereupon, at 4:35 o'clock p.m., a recess herein was taken until 10:00 o'clock a.m., Wednesday, March 27, 1957.)

Wednesday, March 27, 1957. 10:00 o'clock a.m.

(All parties present as before.)

The Court: Counsel may proceed in the case on trial when you are ready.

Mr. Riley: May it please the Court, we would like to interrupt the testimony of Mr. Pitcher at this time to present medical testimony on behalf of Mr. Maynard. I have Dr. Seering in court ready to testify at this time.

The Court: The Court approves of that interruption and you may call the doctor, and Mr. Pitcher is temporarily withdrawn from the stand for the purpose mentioned. [151]

Mr. Riley: Thank you, Your Honor.

(Witness Pitcher temporarily withdrawn from stand.)

(Dr. Albert H. Seering, called as a witness by plaintiffs, was sworn and testified.)

(The deposition of Dr. Earle Conwell was read.)

The Court: Do you offer this deposition as a part of the plaintiffs' case in chief?

Mr. Riley: I do, Your Honor, if the Court pleases, at this time.

The Court: Do you intend to offer as a part of plaintiffs' case in chief any more medical testimony?

Mr. Riley: I do not, Your Honor.

The Court: Very well. Does that assist opposing Counsel, those for the defense, in determining now whether you wish to ask any further questions of the plaintiff Maynard?

Mr. Karr: Yes, Your Honor. I would like to

have an opportunity to examine Mr. Maynard further.

The Court: The Court would ask you to begin that at 1:30, and be prepared to ask him beginning at that time all of the questions which you think the defendant might wish to ask him during this trial, and [152] if it is necessary to make him your witness for any part of it, the Court asks you to consider doing that. My understanding is now you are recalling him for further cross examination.

Mr. Karr: That is correct, Your Honor.

The Court: Mr. Maynard, please be here at 1:30 this afternoon for further interrogation.

Mr. Maynard: Yes, sir.

The Court: This court will be at recess until 1:30.

(Thereupon, at 12:00 o'clock noon, a recess herein was taken until 1:30 o'clock p.m.)

Wednesday, March 27, 1957. 1:30 o'clock p.m.

(All parties present as before.)

The Court: When Counsel are ready you may proceed.

Mr. Karr: I think Mr. Maynard is to take the stand, Your Honor.

The Court: You have already been sworn, Mr. Maynard. Resume the stand.

HUFFORD DONALD MAYNARD

(resumed the stand)

Cross Examination—(Continued)

Q. (By Mr. Karr): Mr. Maynard, I believe I

(Testimony of Hufford Donald Maynard.)

understood Dr. Seering this morning to say that he examined you on Monday of this week. Is that correct?

The Court: May I interrupt? You are now further cross examining him in connection with the plaintiffs' case in chief?

Mr. Karr: Yes, that's correct, Your Honor.

The Court: You may proceed.

Q. (By Mr. Karr): Is that correct, sir?

A. Yes, sir.

Q. That's the day this trial started, was the first time [154] you had seen Dr. Seering?

A. Yes, sir.

Q. And when was it you arrived in Seattle?

A. The 7th or 8th.

Q. Of this month? A. Yes, sir.

Q. Now, I think you said you had seen Dr. Dean Crystal before you saw Dr. Seering. When did you see Dr. Crystal?

A. Let's see. About the 10th, I guess it was.

Q. Shortly after you arrived in Seattle?

A. Yes. It wasn't too long.

Q. He examined you at that time?

A. Dr. Crystal, yes, sir.

Q. And did I understand that you had seen Dr. Ruuska before you saw Dr. Crystal?

A. Yes, sir.

Q. That would be then within a day or two after you arrived in Seattle? A. Yes, sir.

Q. Mr. Maynard, I understood Dr. Seering to testify that in taking your history as a part of his

(Testimony of Hufford Donald Maynard.)

examination he understood you to say that you had suffered from pain and tightness in your legs from shortly after the accident. Did you tell him that?

A. I don't recall exactly what I told him, no, sir.

Q. Well, did you tell him that you had had a condition of pain and discomfort in your legs during the year or two following the accident?

A. Yes, sir, I did.

Q. That is not correct, is it, sir?

A. Yes, sir, it is.

Q. You recall, do you not, the deposition previously referred to which we took in our office on the 7th of this month? A. Yes, sir.

Q. Do you recall on that occasion my asking you whether or not you had had difficulty in the nature of pain and discomfort, trouble in your legs, after you were home in Alabama and went back to Japan on duty, do you recall my asking about that? A. Yes, sir.

Q. You told me you didn't have any such difficulty, did you not, for a year or two after the accident?

A. I was referring to the type of pain that I have now.

Q. You told me you didn't have trouble for a year or two after the accident, did you not, sir?

A. I don't quite remember exactly what I said, no, sir.

Q. May I ask you if I didn't ask you—I was examining you, you will recall, about your condi-

(Testimony of Hufford Donald Maynard.)

tion after you [156] had been home for the roughly forty days following the accident and when you returned to Japan for about nine months or a year additional duty. You remember that sequence of events. Do you recall my asking you, "So you were back on the job then less than a year after you returned from the accident?" and you answered, "Right." Question: "During that time what was your condition so far as your legs were concerned?" Didn't you answer, "Well, I—it soon got over that and it didn't bother me hardly. Actually it didn't really start bothering me until about two years ago, I guess."

A. That is what I——

Q. You answered that, did you not, sir?

A. I said that, yes.

Q. And I then proceeded to ask you, Question: "I see. Well, up to the time of your discharge you didn't have any trouble?" You answered, "Yes."

Question: "Did you notice it at all? Did you have any trouble after you got back to Japan?" And didn't you answer me, "Not that I remember of. Of course that's been quite some time ago. I can't remember too good about that time. Like I say, it only bothers me when I'm doing a lot of walking or a lot of standing around." And didn't I ask you then, [157] "But you don't remember having that sort of experience during that year more or less after you returned to Japan?" Answer: "No."

That's what you told me in the deposition, is it

(Testimony of Hufford Donald Maynard.)

not, sir? A. Yes, sir.

Mr. Karr: May I have an exhibit marked?

The Court: You may.

The Clerk: It will be marked Defendant's Exhibit No. A-17.

(Military medical record of plaintiff Maynard was marked Defendant's Exhibit No. A-17 for identification.)

(Defendant's Exhibit No. A-17 for identification was examined by Counsel for plaintiff.)

The Court: Mr. Karr, does this exhibit last marked for identification obviously have an appropriate name that can be assigned to it or is it a rather complicated name?

Mr. Karr: No, Your Honor, it's medical record of Mr. Maynard during his military service. Military medical record of the plaintiff.

The Court: Do you agree that that is the type of thing it is, Mr. Riley? [158]

Mr. Riley: It is a report of medical examination at the time of discharge, separation, Your Honor.

The Court: Does it have any constituent basic papers attached to it?

Mr. Karr: I don't understand what Your Honor means.

The Court: I am trying to see if the name "Medical Report" is inclusive of the nature of all the information that is connected with it.

Mr. Karr: The name of "Medical Report" is

(Testimony of Hufford Donald Maynard.)
not inclusive. "Medical Record" would cover all of it.

The Court: It is military—what do you call it?

Mr. Karr: Military medical record, Your Honor.

Mr. Riley: Well, I object to it as a medical record.

The Court: Nothing has happened with respect to it except the marking. Save your remarks until an offer is made of it or until something is done in the meantime.

Q. (By Mr. Karr): Mr. Maynard, would you thumb through that briefly and see if you can identify each of the pages as carrying your name? I think the second page [159] is the reverse of the first page. It may not have your name on it.

A. Yes.

Mr. Karr: We offer it in evidence, Your Honor. I might explain for the purpose of the record that a certified copy of the complete record is here, and I believe——

The Court: Let opposing Counsel see it, if he has not.

Mr. Karr: He has seen it.

Mr. Riley: My objection to it is that it is not the complete record. It's only a part of the record. It's a single report of an examination, and it's not the complete record.

The Court: I do not know that that is a necessary condition to admissibility, that all of the records be here.

(Testimony of Hufford Donald Maynard.)

Mr. Riley, do you deny that this exhibit contains a true photostatic copy or copies of Enlistment Record, United States Air Force, NME Form 4, that is one thing; Service Record, WD AGO Form 24A, that is another thing; two Reports of Medical Examination, Standard Forms 88, that is a third item; two Reports of Medical History, Standard Forms 89, that is a fourth item; three Medical Report Cards, WD AGO [160] Forms 8-24, that is another item; six Miscellaneous Tests or Examinations, Standard Forms 514m, those comprise another item; Clinical Record Cover Sheet, WD AGO Form 8-33, which comprise still another item; Record of Outpatient Service, AF Form 277, and Individual Certificate of Medical Clearance, the originals of which are in the custody of the Adjutant General of the United States Army, comprising another item; three Serology Reports, Standard Forms 514c, and Report of Separation from the Armed Forces of the United States, DD Form 214, copies of which are in the custody of the Adjutant General of the Army, is still another item.

Do you deny the accuracy of that certificate as to those facts?

Mr. Riley: No, Your Honor, I do not deny the accuracy of that certificate.

The Court: Is that all it is that you offer, is what is stated in that certificate?

Mr. Karr: Well, it isn't everything in the certi-

(Testimony of Hufford Donald Maynard.)

ficate that is offered, Your Honor. What I have done is this:—

The Court: What I mean to say is does the exhibit comprise the things as accurately reflected by this certificate? [161]

Mr. Karr: The exhibit comprises a portion of the things covered in the certificate, Your Honor. It does not include all of them because the complete record includes a great deal of Mr. Maynard's medical history with the U. S. Army that wouldn't have any—

The Court: Read the certificate again. Just look at it. In this exhibit marked for identification Defendant's Exhibit A-17 does it now comprise each one of those items mentioned by me as items stated in that certificate?

Mr. Karr: No, the exhibit does not comprise each one, Your Honor.

The Court: It does not comprise all parts of each one of those items?

Mr. Karr: It does not comprise—

The Court: What has become of the parts that it does not include?

Mr. Karr: Well, I have done this, Your Honor, —may I explain?

The Court: Yes.

Mr. Karr: This record, as Your Honor will find from the certificate, covers Mr. Maynard's full period of enlistment with the Air Force from 1949 to 1953. A portion of this record in my judgment has no relationship to this lawsuit. As a conse-

(Testimony of Hufford Donald Maynard.)

quence, in [162] having the record converted from the white on black to black on white I had photostated the parts that I think are material and admissible. I have no objection if Mr. Riley wants to offer additional parts.

The Court: The only reason you are entitled to the admission in evidence of A-17 is the support which admissibility receives from that certificate.

Mr. Karr: I understand that, Your Honor.

The Court: And that certificate does not certify as to what you have here, therefore the objection is sustained.

(Defendant's Exhibit No. A-17 for identification was refused.)

Mr. Karr: Your Honor, I'm afraid I haven't made myself clear. This certificate——

The Court: You may not accept the ruling. I hardly think that is the trouble. My understanding is that that certificate is one thing and you have here parts only of the things mentioned in that certificate.

Mr. Karr: That is correct, Your Honor, but the certificate——

The Court: I will not be able to admit it in evidence.

Mr. Karr: I'm sorry, I don't—— [163]

The Court: I have made a ruling and it will have to stand. I ask you to proceed.

Mr. Karr: May I ask that the——

The Court: I would say only this in addition, that if you tender to this Court a photostat copy

(Testimony of Hufford Donald Maynard.)
or photostat copies on white background of each and every thing that is in that certificate together with a photostat copy of that certificate, the Court will consider the matter again as to admissibility, but the Court will not again consider parts of the things which are mentioned in that certificate. That certificate is the thing on which admissibility as to any part of it depends. That is what the statute applies to as to admissibility, and not parts of the certificate. You may proceed.

Mr. Karr: May I ask that the exhibit be handed to Mr. Maynard?

The Court: That will now be done.

(Defendant's Exhibit No. A-17 for identification was handed to the witness.)

Q. (By Mr. Karr): Will you turn to the fourth page in that group of papers, Mr. Maynard. Do you recognize your signature? A. Yes.

Q. That is your signature, is it, sir? [164]

A. Yes, sir.

Mr. Karr: I believe that's all then, Your Honor, at this time.

The Court: I am not clear in my mind on what parts of this exhibit for identification A-17 he so identified his signature.

Mr. Karr: On the fourth page, Your Honor.

The Court: One, two, three, four. I see that.

Mr. Karr: Yes.

The Court: Is that the only one?

Mr. Karr: That's the only one that bears his signature, Your Honor.

(Testimony of Hufford Donald Maynard.)

Q. (By Mr. Karr): Mr. Maynard, have you seen the exhibit sufficiently that you now recognize it as a copy of a portion of your service record during your enlistment with the U. S. Air Force?

A. Could I look at that again, please?

(The document was handed to the witness.)

A. This is the discharge examination when I got discharged.

Q. And by "This" you are referring to what, Mr. Maynard, the first several pages or the entire exhibit?

A. The one with my signature on it.

The Court: What about the three pages ahead [165] of it?

A. That is the same thing, the best I can see.

The Court: Is it a part of that material as to which you signed on Page 4 or is it not? Look at it and see if you can tell, and if so, answer.

A. Well, sir, the two pages that I have my signature on is the one that I made out. The other one the doctor made out.

The Court: Was the doctor's making out as you have just now described it in effect a part of the papers that you intended to sign and by signing approve the accuracy of, the signing inquired of by the Court being on the fourth sheet of those small sheets of paper which are a part of Defendant's Exhibit A-17?

A. Sir, for the one that I did sign, yes, sir, but I didn't—it wasn't necessary for me to sign the other one, because that's the doctor's report.

Mr. Riley: May I ask a question?

(Testimony of Hufford Donald Maynard.)

The Court: You may. You may interrupt to ask a question.

Mr. Riley: Do you know whether or not—do you know anything about the doctor's report? Did you see it at the time you signed it? [166]

A. I didn't sign the doctor's report.

Mr. Riley: Did you see it at the time you signed the other part? A. No, sir.

Mr. Riley: And you don't know what it contains now? A. No, I don't.

Mr. Riley: I think that would be sufficient, Your Honor. He can't identify it.

The Court: It all depends on whether it was a part of the thing that he signed. I will have to depend upon Counsel for further information upon that. If the doctor's report was made out on the paper or group of papers which he obviously was validating as approving by his signature thereon, no matter whether he read each word in it or not, the Court might be confronted with the necessity of ruling upon the admissibility as to that. It might present a situation similar to a contract consisting of four pages, only one of which has a signature page, the last one, and the question arising as to whether the signature of one of the contractors on that page was with reference to the three preceding pages also. You may proceed.

Mr. Riley: At the time you signed Page 4 were you given any other papers to examine at the same [167] time? A. No, just Page 4.

(Testimony of Hufford Donald Maynard.)

Mr. Riley: Do you remember seeing the other pages there at the same time?

A. No, I don't.

Mr. Riley: Do you have any reason to believe that they were there at the same time?

A. No.

The Court: That is all. You may inquire, Mr. Karr, if you wish to.

Q. (By Mr. Karr): Mr. Maynard, will you please look at Page 3 and tell us whether that is not a part of the same instrument as Page 4, Page 4 being a second part of the same paper?

A. I believe it is, yes.

Q. Now, I think the question I asked you just a little while back was, would you please examine all of the exhibit and tell us whether or not you do not recognize all of it as a portion of your medical service record while you were with the Air Force.

A. The pages three and four, I definitely know that is part of the form I filled out for discharge. These other forms, I can't swear to that because actually I don't know. It has my name on it.

Q. Do you question whether it is a part of your service [168] record?

A. For pages three and four, yes, sir.

Q. With the exception of pages three and four you question whether the balance is a part of your service record?

A. I don't know whether they are or not.

Q. Very well.

(Testimony of Hufford Donald Maynard.)

Mr. Karr: I won't pursue that further at this time, Your Honor. I have no further questions of the witness at this point, Your Honor, except I would like to explain this: I'm afraid I haven't made it clear to the Court the reason I didn't have all of the pages attached to this certification reproduced was because I considered some of them immaterial, but since apparently I can't do it that way I will have them reproduced, so I will later offer reproductions of the entire—all the pages attached to the certification. I don't believe I will need Mr. Maynard here for that purpose.

The Court: Mr. Riley, can you project yourself into the future to that point when he will, if he does, offer what is obviously a true photostat copy of everything under the seal of that certification, that official certification?

Mr. Riley: I believe I can. You mean with respect to examining Mr. Maynard, Your Honor?

The Court: Yes, and with respect to your attitude on the admissibility if he offers a complete set of those papers.

Mr. Riley: I believe I can, and may I confer briefly?

The Court: Yes, you may.

(Brief pause.)

The Court: May I interrupt you to suggest that that question at that time as to whether such a copy will be admissible, as I understand it would be, unless you insisted that only the thing itself could be admitted, would be admissible. I under-

(Testimony of Hufford Donald Maynard.)

stand that there was a prospect that plaintiffs' Counsel would have no more objection to a white background photostat copy of this original certified or certificated black background file than he would to the original certificated file itself. Do you suppose that will be your attitude? And you may answer after you have conferred with Counsel, because that is all there is in it. If Mr. Karr at this moment had a photostat copy of the entire file in the same form and in the same order together with a proper photostat of the certificate itself, would you have any objection to his offering that instead of this original certificated file? That is the question. In order that he may [170] comply with the rules of this local court.

(Brief pause.)

Mr. Riley: Well, your last question, Your Honor, if the whole thing were submitted, we wouldn't have objection.

The Court: I have no right to change that certificate, Mr. Karr, and in view of what I understand to be plaintiffs' Counsel's present attitude, the only question that is involved is to present a true and correct copy of that certificated file, that is all.

Mr. Karr: Very well. I understand.

The Court: And I advise Counsel that there is no question in my mind but what the certificated file, were it not for our local rule, would now be admissible in this trial right now on the face of the certificate alone. You may proceed.

(Testimony of Hufford Donald Maynard.)

Mr. Karr: Is Mr. Riley through? I'm not clear.

Mr. Riley: I have a couple questions.

Mr. Karr: Oh.

Redirect Examination

Q. (By Mr. Riley): Well, Mr. Maynard, Counsel cited to you your deposition taken in his offices on March 7th pursuant to our [171] agreement with him and in response to his question, "During that time what was your condition so far as your legs were concerned?" you stated, "Well, I—it soon got over that and it didn't bother me hardly. Actually it didn't really start bothering me until two years ago, I guess."

Now would you explain what you meant by that statement?

A. Yes. What I meant by that statement is that my legs were bothering me but I didn't pay any particular attention to it because I figured it was an after effect of the cold water and I figured it would soon go away. Actually what I tried to say there is that it didn't start hurting real bad. In other words, it increased as it went along.

Q. All right. Then the question——

The Court: May I with Counsel's consent ask one question not within the scope of this redirect examination or of Mr. Karr's further cross? I wish you for my convenience would restate how long you think your feet or legs or both were exposed to the actual presence of that sea water while you

(Testimony of Hufford Donald Maynard.)

were on and about that wing of the airship that you mentioned previously after the crash.

A. Sir, it was about an hour and a half. [172]

The Court: You may proceed.

Q. (By Mr. Riley): The next question that Mr. Karr called your attention to stated, "Did you notice it at all? Did you have any trouble after you got back to Japan?" and you answered, "Not that I remember of. Of course that's been quite some time ago. I can't remember too good about that time. Like I say, it only bothers me when I'm doing a lot of walking or a lot of standing around."

Would you explain that statement?

A. Well, it's like I said there, it's been some time and the actual incidents in it, and then as I say, it increased up to now where even less walking than I did during those days will bother me, and in my particular job I didn't have the occasion to do much walking except once in a while they'd have a parade or an inspection, which was very seldom that they had 'em.

Q. You have submitted to several physical examinations, one by the defendant's doctor and Dr. Conwell and again here in Seattle, with respect to your legs and feet. Were you examined in any similar manner in any of the medical examinations given to you when you were released from the Air Force or when you entered or were released from the Marine Corps? [173]

A. No, I wasn't.

(Testimony of Hufford Donald Maynard.)

Q. On any of those occasions were you questioned directly about your legs?

Mr. Karr: I object to that, Your Honor. It is leading. This is his client.

The Court: That objection is overruled.

Q. (By Mr. Riley): On any of those occasions were you questioned directly about your legs?

A. No, sir, I wasn't.

Q. On any of those occasions were your legs and feet examined?

A. No, sir, they were not.

Q. On any of those occasions were any measurements of blood pressure or pulses taken on any portions of your lower extremities?

A. No, sir.

The Court: What happened as to this examination with respect to those legs, considering your own part in the performance and the doctor's part in the performance? Just tell everything that happened, if anything happened, about your legs.

A. You mean in getting discharged from the service, sir?

The Court: No, when this examination was made about which Mr. Riley was inquiring. What did [174] you do about your legs, what did the doctor do or say about your legs and what did you do or say about your legs, if anything? I want to hear the whole story.

A. I didn't say anything about my legs, sir. They checked——

The Court: You did not say anything about it

(Testimony of Hufford Donald Maynard.)
and the doctor said nothing about it, is that what the situation was? A. Yes, sir.

The Court: You may inquire.

Mr. Riley: I have no further questions, Your Honor.

Recross Examination

Q. (By Mr. Karr): Mr. Maynard, Mr. Riley just asked you if when you took the medical examination for admission to the Marine Corps there was any examination of your legs and you said no. That is not correct, is it, sir?

A. Well, he said with blood pressure.

Q. No, he asked you about the examination of your legs.

A. They check to see if you have fallen arches, yes, sir.

Q. Well, they did considerably more than that, did they not, sir?

A. Not that I remember. [175]

Q. Let us review the initials of that Marine Corps medical. What are they?

A. P-u-l-e-s—u-e-s.

Q. P-u-l-h-e-s, isn't that it? What did the "l" stand for, do you remember? A. Yes, sir.

Q. "Lower extremities", didn't it?

A. Yes, sir.

Q. That meant that they examined your legs, did it not, sir? A. Yes, sir.

Q. And they graded you after a complete examination of your legs as they graded all other recruits in different categories depending upon

(Testimony of Hufford Donald Maynard.)

whether you had anything wrong with you or not, isn't that right?

A. They give you an examination, but it's not a real thorough one.

Q. In your opinion it wasn't thorough, but they graded you, that was the question I asked you, didn't they? A. Yes, sir.

Q. And they graded some recruits in the top grade and some in the middle and some of them lower and the like, did they not?

A. Yes, sir.

Q. And you were graded in the highest category on the [176] examination of your legs, were you not, sir? A. Yes, sir.

The Court: What branch of the service was this?

A. That was the Marine Corps, sir.

The Court: That is the examination the Marines gave you, is that right?

A. Well, actually, no, sir. The Navy Department does the examination.

Q. (By Mr. Karr): The Navy Department gave the examination upon your application to the Marines; right, sir?

A. Yes, sir. All the medical personnel in the Marine Corps are—with the exception of a very few doctors, they are Navy personnel.

Q. That examination, as I recall, was sometime in 1954, was it not, sir? A. Yes, sir.

Q. That was at about the time you took the thirteen weeks of boot camp at Parris Island?

A. That was—right, yes, sir.

(Testimony of Hufford Donald Maynard.)

Mr. Karr: That's all.

Redirect Examination

Q. (By Mr. Riley): Would you state what examination they made of your [177] lower extremities?

A. They had you to go up on your toes and they checked to see if you had arches or not, and they would tell you to walk away from them and back towards them, see if you had toes missing, and that type.

Q. Is there anything else that you can recall?

A. Not that I can recall, no, sir.

Q. Did they check you——

The Court: If you can recall your age, what was your age then?

A. My age, sir, was——

The Court: At that time when that examination was made.

A. About twenty-five, I think—no, sir, wait a minute now.

The Court: You were fairly mature as a young man, weren't you?

A. Yes, sir. I was twenty-six, something around there. I——

The Court: You knew the reputation of the Marine Corps as to being hard or soft duty in the military service?

A. Yes, sir.

Mr. Riley: I have no further questions, if the Court please. [178]

The Court: Is there anything else?

(Testimony of Hufford Donald Maynard.)

Mr. Karr: Yes, Your Honor. One additional question.

Recross Examination

Q. (By Mr. Karr): There had been another medical examination by the military in January of 1953, a year after the accident, in which they had also examined your legs, was there not, sir?

A. In '53 after the accident?

Q. Yes, sir, January of '53, shortly before your discharge from the Air Force.

A. Do you mean other than the discharge examination?

Q. No, I mean the discharge examination. We have just talked about the examination when you went into the Marines in July of '54. Now, there had been a discharge examination from the Air Force in January of '53, had there not?

A. Yes, sir.

Q. In which they checked on your legs, too?

A. The same type of examination, yes, sir.

Mr. Karr: I have nothing further, Your Honor.

The Court: Is there anything further, Mr. [179] Riley?

Mr. Riley: No, Your Honor.

The Court: You may step down.

(The witness was excused from the witness stand.)

The Court: You may proceed with the plaintiffs' case in chief.

Mr. Riley: I'll recall Mr. Pitcher.

EDWARD K. PITCHER
(resumed the stand.)

Direct Examination—(Continued)

Q. (By Mr. Riley): Now, Mr. Pitcher, you stated that your title is supervisor of equipment service? A. That's right.

Q. And you stated that your duties are cleaning and supplying the aircraft with all the necessary equipment for their flights?

A. That's right.

Q. And that it is your responsibility to see that the aircraft are supplied in the case of over water flights with the ditching folders which we began discussing yesterday sufficient for the round trip?

A. That's right. [180]

Q. Overseas. Is it your responsibility to see that the safety equipment installed in the aircraft is installed in the locations specified by the maintenance manual of the airline for that particular type of aircraft? A. No, it's not.

Q. Whose responsibility is that?

A. The inspection department.

Q. And in Seattle in 1952 who was the individual in charge of the proper placement of safety equipment?

A. I believe it was Mr. Ophsahl.

Q. Is it his responsibility—are you responsible for the placement of flares in the aircraft?

A. No, we're not.

Q. Are you responsible for the placement of emergency lighting in the aircraft?

A. No, we're not.

(Testimony of Edward K. Pitcher.)

Q. Are you responsible to see that life rafts are in the aircraft? A. No, we're not.

Q. Are you responsible to see that life jackets are stowed in the aircraft? A. No, we're not.

Q. But it is your duty to supply the aircraft, is it not?

A. With certain items, yes, sir.

Q. I understood you to state that it was your duty to see [181] that these items were in the aircraft before the flight.

A. No, it's not our duty.

Q. In the case of life rafts, that is Mr. Ophsahl's function?

A. That is their duty on the final inspection, yes, sir.

Q. You state "final inspection". Now would you state what you mean by "final inspection"?

A. Preflight inspection.

Q. This inspection is completed prior to each flight? A. That's right.

Q. Didn't you state yesterday that you checked to see if the aircraft does have these items?

A. I believe I said that we did because we're pretty closely associated with the airplanes, we're supplying the literature for them, and at the time we supply the literature we also look around to see if the stuff is on.

Q. I see.

A. While it's not our duty, we generally look it over.

Q. Now referring to Plaintiffs' Exhibit 12 which you yesterday identified as a portion of the

(Testimony of Edward K. Pitcher.)

Northwest Orient operations manual for DC-4 type aircraft, would you look through those portions you have before you and tell me whether or not it provides how many Mae [182] Wests, life jackets, will be installed in DC-4 type aircraft?

A. That question was how many?

Q. Yes, sir, how many life jackets are required to be installed in DC-4 type aircraft?

A. One for each passenger.

Q. And how many is that?

A. Well, that would be one for each seat of the airplane.

Q. Does not that portion of the manual prescribe the number of seats will be the standard configuration in DC-4 type aircraft in the Northwest operation?

A. This describes several seating arrangements.

Q. All right. How many jackets are required in the maximum of the several configurations you have before you? ..

Mr. Koch: Your Honor, I object to that question because we're only concerned with the provisions of the pamphlet, if that pamphlet covers it all, of the seating on the particular flight in question, and to take out a manual reference dealing with seating and life vests for another type of plane and a different location and place of flight is only confusing the record so that we'll have difficulty understanding exactly what the duties imposed with respect to the aircraft in question really are. [183]

Mr. Riley: That's what I'm trying to bring out,

(Testimony of Edward K. Pitcher.)

Your Honor, is how many life jackets were required to be stowed aboard the aircraft, and I'm asking Mr. Pitcher to tell me.

The Court: The objection is overruled.

Q. (By Mr. Riley): Are you able to tell, Mr. Pitcher?

A. To the best of my knowledge, one for each seat of the aircraft plus the additional ones, of course, for the crew and the stewardess.

Q. Do you know how many seats were in Flight 324 of January 19, 1952?

A. No, I don't.

Q. You were familiar with the aircraft and the accident of the aircraft involved?

A. Yes. We had a number of aircraft. I was familiar with it, but not the number of seats. I don't recall that.

Q. For over water navigation flight, such as Flight 324 was, involving leaving Seattle for Japan and return contemplating a round trip, would you determine from the manual before you which sketch and configuration would be applicable to that particular type of flight and determine from the sketch then how many life jackets are required in numbers?

Mr. Koch: Your Honor, I would like to make [184] a further objection. This witness has testified that he is the supervisor of equipment service, that it's a different department, the inspection department, under Mr. Ophsahl, is in charge of the equipment itself and the inspection of it.

This witness does not know of this material, it

(Testimony of Edward K. Pitcher.)

isn't his function, he's not in charge of it, and I think he shouldn't be questioned with respect to it.

The Court: The objection is overruled.

A. Would you repeat the question, please?

Mr. Riley: Would you repeat the question, Mr. Reporter?

The Court: The reporter will do that.

(The reporter read the last question.)

A. I couldn't answer that because I don't know how many seats were on that aircraft.

Q. (By Mr. Riley): Yesterday you testified that this publication that you have before you now prescribes the configuration of DC-4 type aircraft in Northwest Airlines operations. Aren't you able to tell from the sketches before you which of the sketches would be applicable?

A. This is a DC-4 type aircraft on Northwest. However, there's a number of different types of DC-4's. This only covers about two or three, and—— [185]

The Court: Ask him another question.

Q. (By Mr. Riley): Then from the sketches before you what is the maximum number of Mae Wests that would be required in any conceivable situation?

Mr. Koch: I object again, your Honor, because that isn't this situation. He should be inquiring——

Mr. Riley: I asked for the maximum number, if your Honor please.

The Court: The word "conceivable," if it were normal, that would be one thing, but you have not

(Testimony of Edward K. Pitcher.)

asked him for the normal conceivable. The objection is sustained.

Q. (By Mr. Riley): Would you examine the sketches before you, Mr. Pitcher, and determine what would be the maximum number of life jackets required in any normal configuration of aircraft, DC-4 type aircraft?

The Court: Of the type in use in this flight.

Q. (By Mr. Riley): Of the type in use in this flight.

A. Well, that's not in my department and I wouldn't be able to determine that because I have nothing to do with it. I've never had to set up an airplane of that type. We merely supply the literature for that airplane regardless of the number of seats. [186]

Q. All right, and you testified yesterday that you're required to put in ditching literature which is the same and which applies to the particular aircraft on a particular flight; didn't you say that?

A. Oh, yes.

Q. Then how can you tell you've got the right kind of literature if you don't know what type of equipment is required?

A. That's put on according to the check lists. We're required to put on 150.

Q. 150 what?

A. Of those pieces of literature.

Q. Well, how do you know you've got the right kind of literature and the right kind of airplane if you don't know what stuff is going into the particular airplane?

(Testimony of Edward K. Pitcher.)

Mr. Koch: Your Honor, this sounds a great deal like cross examination and I object to the question, the form of it and the manner in which it is presented.

The Court: You have not called the witness as an adverse witness.

Mr. Riley: Well, your Honor, yesterday that came up and your Honor sustained an objection and I felt there was a problem there and I last night checked the rules of civil procedure and I came upon [187] Rule 43b dealing with the scope of examination and cross examination. Mr. Pitcher has been——

The Court: That relates to calling an adverse witness, does it?

Mr. Riley: Yes, it does, if your Honor please, and Mr. Pitcher as a witness has identified himself as the supervisor of equipment service. Now, he is an employee of the defendant. I state now that we have called him as a hostile witness. He is an employee of the defendant corporation, and Rule 43b states,

“A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director or managing agent of a public or private corporation or any partnership or association which is an adverse party and interrogate him by leading questions and contradict him and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also

(Testimony of Edward K. Pitcher.)

and may be cross examined by the adverse party"—
et cetera. [188]

The Court: You do not think he qualifies as an adverse witness as a managing agent, officer or director, do you?

Mr. Riley: He says he's the supervisor of equipment service for Northwest.

The Court: How many managing agents do you claim have been shown to be employed at Seattle for the defendant?

Mr. Riley: Well, your Honor, I think that the term should be construed not strictly. A managing agent, if they meant the manager or the office manager or the area manager, it seems to me they could have used a more restrictive term. I felt that that term should include anyone who has under his direction and control the personnel, as Mr. Pitcher does and as Mr. Peterson does.

The Court: What would you do with Mr. Peterson if you are going to call this witness the managing agent? What category do you think Mr. Peterson ought to be put in?

Mr. Riley: He probably is the managing agent for this area, for the whole western region. He states his area goes for the whole western region, and it seems to me that department heads of the defendant corporation certainly fall within that rule. [189]

The Court: The Court rules that he does not qualify as an adverse party or an officer, director or managing agent of a private corporation, and

(Testimony of Edward K. Pitcher.)

so forth, but it is questionable as to whether he is an unwilling witness. I do not think he is hostile. There may be some unwillingness.

The Court overrules this objection until the Court is more certain that he is willing to give such information as he has. He has not shown any great hostility, but I am not so sure about his willingness, and for that reason I overrule the objection.

Q. (By Mr. Riley): Can you answer the last question then, Mr. Pitcher?

A. You wanted to know how we——

Mr. Koch: The objection was sustained to the last question, your Honor. I think Mr. Riley should ask another question.

The Court: No, the Court overrules the last objection. That was what I intended to do. If I misspoke myself I am sorry and I would not complain about Counsel's further statement. Proceed.

Q. (By Mr. Riley): Would you like the question repeated? A. I would, yes, please.

(The reporter read the question as [190] follows: "Well, how do you know you've got the right kind of literature and the right kind of airplane if you don't know what stuff is going into the particular airplane?")

A. The number of the ditching folders required on all aircraft is on a check list. I believe at the time on that type of aircraft we put 150, which would be more than sufficient for any number of passengers on the aircraft. But it was a fixed number that we put on by check list. So the number

(Testimony of Edward K. Pitcher.)

of seats as far as we were concerned had no bearing on the amount of the literature that we put on.

Q. (By Mr. Riley): That I understand. However, if you don't know where the equipment is supposed to be, if you don't know where the life rafts are supposed to be and how many life jackets and where they are to be, then how do you know that you have the right literature?

A. I believe at that time we just had one type. It's called the OPF-108.

Q. You had one type of ditching pamphlet?

A. That's right. I think it's Type 108.

Mr. Riley: Would you show Plaintiffs' Exhibit 13 to the witness? [191]

The Court: That will be done.

(The exhibit was handed to the witness.)

Q. (By Mr. Riley): Is that the type of pamphlet you were just referring to, Mr. Pitcher?

A. Yes, this is the OPF-108.

Q. I understand at that time that this was the only type of pamphlet you had for installation in the aircraft.

A. We only had one type at that time.

Q. Now, at that time you were operating different types of aircraft and different configurations of DC-4 aircraft, is that right?

A. We were just operating the DC-4's over there, yes.

Q. You stated earlier, am I correct, that there were many different configurations?

A. That's right.

(Testimony of Edward K. Pitcher.)

Q. Would you refer to Plaintiffs' Exhibit 13, the pamphlet just handed you, and point out where the life rafts were shown to be stored?

A. On this particular pamphlet they were just forward of the main cabin door.

Q. Now would you show that to the Court and show the Court where the life rafts were stowed?

Mr. Riley: If your Honor please, I might inquire of the Court's procedure in this matter. I wish to illustrate to the trier of the fact—— [192]

The Court: I prefer that you proceed.

Mr. Riley: All right.

Q. (By Mr. Riley): Would you——

The Court: I would rather that he say in words so the record, if you want a transcript of it later, will show where the witness said they were on the airplane, and everyone is supposed to know, if he wants to get this information, where to put that location as described by this witness.

Mr. Riley: Very well, your Honor.

Q. (By Mr. Riley): You stated it was forward of the main door, is that right, Mr. Pitcher?

A. That's right.

The Court: Do you mean the main passenger entrance and exit door? A. Yes, sir.

Q. (By Mr. Riley): Now, how far forward, Mr. Pitcher?

A. Well, it's immediately adjacent to the door.

Q. Are those ordinarily exposed where they can be seen?

(Testimony of Edward K. Pitcher.)

Mr. Koch: Your Honor, may I have the last answer read? I couldn't hear it.

The Court: "Immediately adjacent to the door."

Mr. Koch: Thank you.

The Court: That is in substance what he said. [193] There might be some slight variation in the words.

Mr. Riley: I forgot my last question, Mr. Reporter. I'm sorry.

(The reporter read the last question as follows: "Are those ordinarily exposed where they can be seen?")

A. Not always. They're generally in a cabinet.

Q. (By Mr. Riley): Speak up, sir. I didn't hear you.

A. They're generally in a cabinet.

The Court: Is that cabinet closed by a transparent shutter or door, or——

A. No, sir; it's closed by canvas.

The Court: A solid appearing material?

A. Yes, sir.

Q. (By Mr. Riley): Is it painted any distinctive color? A. Not necessarily.

Q. Well, in most cases is it or is it not?

A. I would say it would be the same color as the interior of the aircraft.

Q. Is the cabinet marked in any way?

A. I don't recall on that type ship. I believe it was marked "Life raft" or there was "Life raft" marked over the place.

The Court: Were there on that airplane, if [194]

(Testimony of Edward K. Pitcher.)

you know, any of these collapsible, airtight, cloth life jackets that the passengers are supposed to blow up with air after putting the cloth air jacket in proper position around his shoulders and back so as to make it a floating, buoyant, balloonized object?

A. Yes, sir, there was.

The Court: Were there some of those on there?

A. Yes, sir.

The Court: You may inquire.

Q. (By Mr. Riley): Where are these life jackets stowed, Mr. Pitcher, in DC-4 type aircraft?

A. On that particular ship I believe they were stowed over the seats in the rack, to the best of my knowledge.

Q. Are there different stowages in different DC-4's? A. I believe there are, yes.

Q. Where else would they be stored in other DC-4's?

A. In the seat pocket immediately ahead of the passenger.

Q. Do they on any occasion store them under the seats?

A. I don't recall any under the seat.

Q. Now I'll ask you to look at Plaintiffs' Exhibit 13 which you have and read from the pamphlet that portion of the pamphlet which states where life vests will be located.

A. It says, "The life vests are located on the overhead racks or under your seat. The purser will instruct [195] you in which of the two loca-

(Testimony of Edward K. Pitcher.)

tions your life belt may be reached shortly after departure.”

Q. Now, in either place they might have been stowed could a passenger see life vests on a casual ride without looking for them?

A. If they were stowed in the overhead rack, yes.

Q. Are these in containers? Are life vests in containers? A. Yes, they're in a container.

Q. And what do these containers look like?

A. They're a canvas bag about three inches wide by eight inches by about twelve inches, roughly.

Q. Are the vests folded in them?

A. They're folded in the bag.

Q. What color are the bags that they are stowed in?

A. Oh, generally they're olive drab, I think would be the color.

Q. What color are the jackets themselves?

A. Yellow.

Q. How many different types of jackets were you using, life jackets were you using—when I say “you” I mean Northwest Airlines, Mr. Pitcher,—using in 1952?

A. I don't remember exactly. It seems to me there was just one type we were using, but the exact type I don't recall.

Q. What type does this ditching pamphlet, Plaintiffs' [196] Exhibit 13, call for?

A. It just calls for a Mae West life belt.

Q. Do you know whether or not that was the

(Testimony of Edward K. Pitcher.)

type that was stowed aboard Flight 324 when it left Seattle?

A. A Mae West is a kind of a general term. We call them all Mae Wests, and as far as I know that was the type of jacket.

The Court: Will you describe that? You might be familiar with the typical description or typical form of description of that article. Can you state the usual printed definition of it, if you are acquainted with any such definition?

A. It's printed that way here, sir. It's printed as a Mae West.

The Court: What do you understand to be its form and nature? Can you describe it and how you put it on and how——

A. I think that description was coined by the Army, sir, in a general——

The Court: I thought you could use words to say what it means.

A. I guess because it makes you look like Mae West when it's blown up. That's the only reason I know why it's called a Mae West.

The Court: Very well. You may proceed. [197]

Q. (By Mr. Riley): Well, what is a Mae West, Mr. Pitcher?

A. Well, that would be an inflatable life jacket as near as I could define one.

Q. You know what a Mae West is for, do you not? A. Yes.

Q. And why they are stowed aboard aircraft?

A. That's right.

(Testimony of Edward K. Pitcher.)

Q. Well, why?

A. Well, it's an emergency jacket in case of ditching.

Q. All right.

A. At sea.

The Court: With the hope that the body with this inflated jacket will be buoyed above the surface of the water so that the passenger will not drown or will be prevented from drowning?

A. Yes, sir.

Q. (By Mr. Riley): How are these inflated?

A. By two oxygen cylinders.

Q. And how are those actuated?

A. By pulling a ring, a trigger pierces the bottle and lets the gas flow into the jacket.

Q. Now, there are a number of different types of Mae Wests, are there not, or life jackets?

A. I know of two. There might be more, I don't know. I'm only acquainted with two. [198]

Q. Were those two types in use at the time of the crash of Flight 324?

A. I don't believe they were. I think we only had the one type.

Q. What type was that?

A. The Goodyear type.

Q. And what type is the Goodyear? What does it look like?

A. When I refer to Goodyear, we have two types of literature at the present time. One is for the Goodyear type and one is for the AED, or AD type. Any of the green sacks, we call them Goodyear. I don't believe I could describe——

(Testimony of Edward K. Pitcher.)

The Court: See if you cannot——

A. The method of tying it on I think is the difference in the two.

The Court: We have spent a good deal of time on life jackets here. We have been on it a long time.

Mr. Riley: I'm sorry it takes so much time, your Honor. I hadn't examined Mr. Pitcher previously.

Q. (By Mr. Riley): At the time of our previous examination, Mr. Pitcher, there were available two different types of life rafts, is that right?

A. That's right.

Q. Were one of those types the type described in Plaintiffs' [199] Exhibit 13?

A. I don't believe I can answer that. It's not printed on the cover, and the picture is more or less of a general picture.

The Court: Is there something you can call your attention to specifically and save his time as well as that of others?

A. The picture in here is a general picture that could cover any number of different type of jackets.

The Court: Does anyone have a copy of that exhibit so you could use it while the witness is using the exhibit?

Mr. Riley: Yes, I have.

The Court: Why don't you look at that and refer his attention to such and such a place.

Q. (By Mr. Riley): I'm looking at the first

(Testimony of Edward K. Pitcher.)

diagram under the caption Prepare for Ditching, Mr. Pitcher.

Mr. Koch: Your Honor, may I interrupt the proceeding? I'm not sure, although I could be grossly in error, that the pamphlet Mr. Riley is questioning the witness from is the same one the witness is holding.

The Court: Be careful to be sure that you are not looking at something that he does not have the benefit of. You may see what he is looking at.

Mr. Riley: This is a photostatic copy of the [200] very one that Mr. Pitcher has. (Handing document to Mr. Koch.)

The Court: The Court will take your word for that. Mr. Koch, will you return it to examining Counsel?

Mr. Koch: I don't have one, so I can't tell (handing document to Mr. Riley).

The Court: You may proceed.

Q. (By Mr. Riley): What I really want to ask you, Mr. Pitcher, is, don't you know what type of Mae West or life jacket was installed on the aircraft and, if so, can't you tell us whether or not it was the same type as is described in the pamphlet you have before you?

A. Well, you're getting——

The Court: Looking at such and such a place on that pamphlet.

Q. (By Mr. Riley): Looking at the diagrams——

A. We were providing the type of ditching

(Testimony of Edward K. Pitcher.)

folder provided for at the time on the aircraft. We didn't look through the rafts, we merely provided the type of folder that was provided for it.

Q. And you have stated that this was the only type pamphlet that was available?

A. I don't know whether this is the exact one or not. It's not dated. It is similar to the ones we were using [201] at the time, yes, sir.

Mr. Riley: The document has been submitted in evidence, your Honor, as the one which was used purportedly aboard the aircraft.

Mr. Koch: Well, your Honor, I take exception to that. The witness that's on the stand is the one through whom this exhibit was introduced, and——

The Court: The objection is sustained. I do not think Counsel should make that statement at this time.

Mr. Riley: Well,——

The Court: The record will show what was done and said at the time of admission. This witness has made a statement as a witness.

Mr. Riley: I see.

The Court: You are not a witness, you see.

Mr. Riley: Yes, sir. I only wanted to clarify what was said at the time it was admitted and I didn't mean to confuse the two times there.

The Court: Very well. If you want to use that information to ask this witness another question, that is for you to decide, and the Court is not ruling on your doing that.

Q. (By Mr. Riley): Mr. Pitcher, as supervisor

(Testimony of Edward K. Pitcher.)

of equipment service have you at any time taken ditching training or [202] training to simulate conditions under which the crew and passengers of an aircraft would be exposed in the event of a ditching? A. No, sir.

Q. I'll refer once again to the diagrams illustrating the method by which you don a Mae West or put on a life jacket, or Mae West, whichever you call it, and I'll ask you to read the instructions there in the order in which they are given in English, those short paragraphs, commencing with the caption Prepare for Ditching.

A. (Reading) "Prepare for ditching. Immediately upon hearing this order—loosen your collar and tie, remove necklaces, glasses, hats, sharp pocket objects, and remove spiked or high-heeled shoes. Do not remove any other clothing. Remove life vest from compartment, keeping the yellow sea marker packet on the outside. Adjust straps so that the vest fits loosely. Do not inflate the vest at this time. Resume normal sitting position and fasten seat belt securely by eliminating all slack in it.

"The next verbal order will be 'Stand by for ditching.' Crew members for each compartment will explain the proper position to be held during the water landing. Do not move until the aircraft has come to a [203] complete stop. (Generally two shocks will be felt, the second slightly more severe than the first.)

"Unfasten seat belt only when aircraft has

(Testimony of Edward K. Pitcher.)

reached a complete stop. Remain in seat until instructed to board life raft by crew members. Do not inflate life vest inside cabin.

“Instructions for inflating life vest.

“Automatically. After leaving aircraft, pull cords with a sharp downward jerk and the belt will inflate automatically.

“Manually: In the event the life belt does not inflate automatically, detach end of rubber tubing, insert tube in mouth at the same time depressing cap with fingers and blow until vest is fully inflated.

“Life Raft Procedure. After the water landing has been completed, crew members will issue directions to your proper life raft station and will tell you how and in what order to board the life raft. At least one member of the crew will be in each life raft and will be in complete charge of his life raft until assistance arrives. Sufficient 10 and 20-man life rafts for all passengers and crew members are carried aboard all Northwest Orient transpacific aircraft. Each raft is equipped for maximum safety and for the most comfort possible.”

The Court: Do you have any knowledge as to how long normally that aircraft would remain afloat if it landed on the water undamaged in its hull?

A. I couldn't answer that, sir. That would be way out of my category. There are men who can answer that one.

(Testimony of Edward K. Pitcher.)

The Court: You are excused from answering that question.

Mr. Riley: May I have Exhibit A-15 in the pre-trial order?

The Clerk: 15?

Mr. Riley: A-15 in the pretrial order.

(The document was handed to Mr. Riley.)

Q. (By Mr. Riley): Do you recall the communication that's marked Defendant's Exhibit A-15, Mr. Pitcher? A. Yes.

Q. What is the date of that communication?

A. January 24, 1952.

Q. From whom did it come?

The Court: If you know.

A. It was from Bert Wean.

Q. (By Mr. Riley): And to whom was it addressed? A. It was addressed to me.

Q. Did you request that it be prepared?

A. Yes, sir. [205]

Q. And for what purpose?

A. I was ordered to get one made up by my superior.

Q. Who was that, Mr. Pitcher?

A. Mr. Matthews.

Q. Would you read the communication?

The Court: Which communication?

Q. (By Mr. Riley): Would you read the letter marked A-15?

The Court: This is the first time I have heard of it. Do you consider it in evidence?

Mr. Riley: Pardon me, your Honor. It is at-

(Testimony of Edward K. Pitcher.)

tached to the pretrial order. I do offer the same in evidence. It's been attached to the pretrial order by agreement of both Counsel as part of the records.

The Court: Is there any objection?

Mr. Koch: None, your Honor.

The Court: It is now admitted, Defendant's Exhibit A-15 referred to in the pretrial order, upon motion of plaintiff.

(Defendant's Exhibit No. A-15 for identification was admitted in evidence.)

The Court: And you may now read that, Mr. Pitcher.

A. (Reading) "Inter-Office Communication. Maintenance Division." Dated January 24, 1952.

"To E. K. Pitcher, Supervisor of Equipment [206] Service, Maintenance Division.

"From Bert Wean, Service Chief—Shift I.

"The following equipment was put on TWA Airlift Ship 601:

"40 Life vests in the cabin located on the overhead in the cabin and fastened with snaps, station #445.

"40 oxygen masks located in the cabin and fastened with snaps, station #445."

The first paragraph was Paragraph (a). The second was Paragraph (b). This is Paragraph (c):

"Two (2) 20 man life rafts located flush with the cabin door and are strapped in with an emergency strap buckle, station #743.

(Testimony of Edward K. Pitcher.)

“(d) Seven (7) life vests located in the buffet section, station #778.

“(e) Seven (7) oxygen mask located in the buffet section.

“(f) One (1) package of emergency clothing located in back of the two 20 man life rafts.

“(g) Seven (7) life vests are located on the bulkhead behind the companionway.

“(i) Three (3) oxygen mask are located behind the navigator's and radio desk.

“(j) One (1) 15 man life raft located at the [207] head of the companionway, station #250.

“(k) One (1) emergency radio located near the rear door, station #743.”

The Court: Is that all of it?

A. That's all of it, sir. Signed Bert Wean.

The Court: At this time we will take about a ten minute recess.

(Short recess.)

Mr. Karr: Your Honor, Mr. Koch will probably conduct all the balance of the examination of witnesses during the plaintiffs' case, so might I be excused at least at this time?

The Court: Is there any objection?

Mr. Riley: I have no objection, your Honor.

The Court: You may be excused.

Mr. Karr: Thank you, your Honor.

The Court: You may proceed.

Q. (By Mr. Riley): Mr. Pitcher, why was this report prepared by Mr. Wean?

The Court: How do you spell the name?

(Testimony of Edward K. Pitcher.)

Mr. Riley: W-e-a-n, your Honor.

A. Was it prepared by him?

Q. (By Mr. Riley): I say why was it? [208]

A. At my request.

Q. Is he the individual who stowed the gear aboard the aircraft or inspected it?

A. No, he wasn't.

Q. Why did he prepare the report, then?

A. I don't recall right now the circumstances of it. We were requested to make a chart on what was in the airplane.

Q. Do you know whether or not he was on the crew at that time?

A. He was on the crew at the time of the departure of the aircraft, yes.

Q. I see.

Mr. Koch: At the time he what?

The Court: Departure for the Orient, is that what you mean?

A. Yes, sir.

The Court: On the outbound trip or flight?

A. Yes, sir.

Q. (By Mr. Riley): Would he be the man responsible for, or would he be your man or the member of your crew responsible for the placement of the literature aboard the aircraft?

A. Yes, sir, he would.

Q. And would he also ascertain that this equipment was [209] aboard the aircraft?

A. It wouldn't be his normal duty, but he would

(Testimony of Edward K. Pitcher.)

probably look it over. We had a habit of doing that.

Q. You say "We had a habit of doing that." Were you expected to do it? A. No, sir.

Q. Now, why did Mr. Matthews ask you to make the report then?

A. Well, that I don't know. He just asked me to make it and I made it.

Q. Would you refer to Page 2 of Plaintiffs' Exhibit A-15 and tell us what it——

Mr. Riley: Does the witness have Plaintiffs' Exhibit A-15?

(The exhibit was handed to the witness.)

Q. (By Mr. Riley): ——and tell us what Page 2 is?

A. It's a sketch showing the location of the life rafts and gear, and vests.

Q. Now would you tell us where the sketch shows that the life rafts are stowed?

A. Immediately aft of the main cabin door.

Q. Would you state that again?

A. Immediately aft of the main cabin door.

Q. Is there anything between the rafts and the main cabin door? [210]

A. I don't recall whether there was on that ship or not.

Q. Well, what does the diagram say?

A. Oh. A snap curtain.

Q. And what type snap curtains did you have in DC-4 aircraft?

(Testimony of Edward K. Pitcher.)

A. I don't remember the exact description of the curtains on that airplane.

Q. Well, in general?

A. In general on the DC-4 aircraft just a heavy curtain with snaps that come loose with a jerk.

Q. How many snaps would there be?

A. I wouldn't have any idea.

Q. Would you be able to see the life raft behind the curtain?

A. I don't remember on that one whether the curtain closed all the way down the aisle or not. There was evidently one on the main cabin door side. Some of them closed and some of them didn't.

Q. Now, what is the difference between the location of the rafts here and in the manual that you referred to yesterday and in Plaintiffs' Exhibit 13, the ditching pamphlet which you stowed aboard the aircraft?

Mr. Riley: Does the witness have Plaintiffs' Exhibit 13, the ditching pamphlet, and Plaintiffs' Exhibit 12? [211]

(The exhibits were handed to the witness.)

A. In this one two of them are forward the cabin door and one is opposite the cabin door.

Q. Now would you explain that please, Mr. Pitcher, before you release Plaintiffs' Exhibit 12, in any of the three configurations are the life rafts aft of the main cabin door? In any of the three configurations in Plaintiffs' Exhibit 12, which is the operations manual for Northwest Airlines for

(Testimony of Edward K. Pitcher.)

DC-4's, are life rafts stowed behind the cabin door, the main door?

A. Not on this Northwest one, no, sir.

Q. All right. Now, where in the ditching pamphlet which is Plaintiffs' Exhibit 13 does the diagram show that the life rafts are placed in the main cabin? A. In this one, forward.

Mr. Koch: I couldn't hear the answer.

Q. (By Mr. Riley): State that again, please.

The Court: "In this one, forward."

A. Forward.

Q. (By Mr. Riley): Incidentally, who drew this sketch, Mr. Pitcher, attached to Plaintiffs' Exhibit A-15? A. I drew the sketch.

Q. And when did you draw that sketch, sir?

A. It's dated January 24, 1952. [212]

Q. What year again, sir? I can't hear you.

A. January 24, 1952.

Q. Thank you. Now, the notation on the bottom says, "TWA 543-601." Would you explain that, please?

A. I don't recall what that number was, Ship 601.

Q. Well, what does the number 601 mean, sir?

A. I believe that would be the company designation for that ship. I'm not sure.

Q. Now, was this sketch a sketch of the aircraft that was used in Flight 324? I mean I'm referring to the drawing that you prepared on January 24, 1952, that was submitted to your supervisor, Mr. Matthews. A. Yes.

(Testimony of Edward K. Pitcher.)

Q. Is there any reason to question the diagram as to the placement of life rafts in the main cabin?

A. No. That's where they were.

Q. What else is located in the after compartment where these life rafts were stowed?

A. The emergency gear and the Gibson girl.

Q. What other facilities are located in the after compartment aside from the emergency equipment you have just described?

A. Oh, after that was the coat compartment.

Q. Anything else back there?

A. Just the lavatories. [213]

Q. Now with reference to these two rafts, what type of rafts were they, Mr. Pitcher?

A. 20-man rafts.

Q. And would you tell us how much they weigh?

A. I would have no idea on that.

Q. Do you have any idea whatsoever?

A. Oh, I can make a wild guess. I can pick them up. They weigh probably about 125, somewhere in that vicinity, but it would be just a guess on my part.

Mr. Koch: Your Honor, I move that the answer be stricken. The witness doesn't know and admits that he is just making a guess.

Mr. Riley: Well, I think that he should know. He's seen the rafts.

Mr. Koch: He said he doesn't know.

The Court: The motion is denied.

Q. (By Mr. Riley): Are these rafts used in your operations, in Northwest operations here at

(Testimony of Edward K. Pitcher.)

Seattle all the time? A. Yes, sir.

Q. Have you seen them? A. Yes, sir.

Q. Have you ever lifted them? A. Yes.

Q. What would you estimate the weight to be?

A. I'd say around 100, 125 pounds. [214]

The Court: Is that the same article you were asking about before Mr. Koch's objection?

Mr. Riley: Yes, sir, it was.

The Court: He had already answered it.

Mr. Riley: I'm sorry, your Honor.

The Court: And he stated his reasons for it.

Q. (By Mr. Riley): Are there any other rafts stowed in the aircraft according to your sketch, Mr. Pitcher?

A. There's another one stowed up by the cockpit.

Q. In what compartment is that life raft stowed?

A. Well, as near as I could say it would be the crew compartment.

Q. Now, what is located in the crew compartment?

A. Just aft of the cockpit where the radio and the navigation table and the crew berth are.

Q. What type of life raft was stowed in that compartment, sir? A. A 15-man.

The Court: One that was calculated to sustain in the water fifteen persons?

A. Yes, sir.

The Court: Adult persons?

A. Yes, sir.

(Testimony of Edward K. Pitcher.)

Q. (By Mr. Riley): I note—incidentally, the two 20-man rafts in the main cabin, how are they held in place or [215] secured?

A. By a quick disconnect web belt.

Q. Now I note the one in the forward compartment is not tied down. Is that true according to your sketch?

A. According to the sketch, yes, sir.

Q. Do you have any idea what would happen to that raft in the event of an impact such as an airplane ditching in the water?

A. I don't recall the reason for not tying it down, unless it was in some kind of a compartment where it didn't require tying down.

Q. I couldn't hear you, sir.

The Court: Read the answer, Mr. Reporter, if you can locate it quickly.

(The reporter read the last answer.)

Q. (By Mr. Riley): Well, you didn't answer my question, Mr. Pitcher. What would happen to the life raft if it were not tied down and the airplane crashed into the water in ditching?

A. That I don't know.

Q. Haven't you any idea?

A. No, I haven't.

Q. Are these life rafts buoyant? Will they support themselves without being inflated in the water?

A. That I don't know. I've never seen one put in the [216] water without being inflated.

Q. There isn't any other emergency equipment stowed aboard the aircraft according to the com-

(Testimony of Edward K. Pitcher.)

munication that you and Mr. Wean forwarded to Mr. Matthews then, is that correct?

Mr. Koch: Your Honor, the question is very leading.

The Court: Try to avoid leading, if you can, until the witness shows there is some reason for leading.

Mr. Riley: Very well, your Honor.

Q. (By Mr. Riley): The report rendered to you from Mr. Wean and in turn to Mr. Matthews, can you state whether or not there was any other—I'll strike that.

Can you state whether or not there was any other emergency equipment located or placed aboard Flight 324, that is Ship 601, when it left Seattle other than the materials described in your report and Mr. Wean's report to Mr. Matthews which is Plaintiffs' Exhibit A-15?

A. I wouldn't know.

Q. Would you have included it on your report had there been any others?

Mr. Koch: Your Honor, I object to that because this isn't his report. It was prepared by [217] Mr. Wean.

Mr. Riley: I believe he stated it was his responsibility and that he asked Mr. Wean to prepare it and that he submitted it to Mr. Matthews.

The Court: The objection is overruled.

Q. (By Mr. Riley): Do you remember the question, sir?

A. Wasn't it about other emergency equipment?

(Testimony of Edward K. Pitcher.)

Q. Had there been any other emergency equipment loaded aboard the aircraft would you not have included—strike that.

Mr. Riley: Mr. Reporter, could you read the last question back?

The Court: That will be done.

(The reporter read the question back as follows: “Would you have included it on your report had there been any others?”)

Mr. Koch: Your Honor, I wish to renew my objection to that because it is obvious from this exhibit that there are things set forth in the letter from Mr. Wean and different things, certain different things set forth in Mr. Pitcher’s sketch, and so to inquire whether everything is included in Mr. Wean’s letter when there are other things not in Mr. Wean’s letter that appear in Mr. Pitcher’s sketch is [218] misleading and improper, in my opinion.

Mr. Riley: I don’t think that shows at all, if your Honor please. I don’t know what Mr. Koch refers to, but——

Mr. Koch: Well, I refer, for example, to the Gibson girl which is listed on—I don’t know if it’s listed, but Mr.——

Mr. Riley: The Gibson girl is Item (k).

Mr. Koch: ——Mr. Pitcher testified to it. Beg pardon?

Mr. Riley: The Gibson girl is Item (k) in the letter.

Mr. Koch: It hasn’t been so identified.

(Testimony of Edward K. Pitcher.)

Mr. Riley: That may be true, but I didn't know it.

Mr. Koch: I'll withdraw my objection, your Honor.

The Court: Proceed.

A. As far as I know this was all the information that Mr. Matthews required.

Q. (By Mr. Riley): You still haven't answered my question, Mr. Pitcher. I want to know whether or not you would have included other emergency equipment had it been loaded aboard the aircraft in this report.

A. I don't get what you mean by "other emergency equipment." [219]

Q. Flares, flashlights, Very pistols,—

A. Oh, we would not have included that. This only concerned the life rafts, jackets and the flotation equipment and oxygen equipment.

Q. Don't you consider that those are as much emergency equipment as life rafts?

A. Well, that is not my category, that's not my job. I supplied the information that was requested and it's all on the paper here. It probably is not a complete list.

Q. What is a Gibson girl?

A. It's an emergency radio transmitter.

Q. If it's not your job to inspect the aircraft, and you have stated that it was your practice to see that the emergency equipment was located aboard the aircraft whose job was it to see that flares and

(Testimony of Edward K. Pitcher.)

pistols and emergency lighting flashlights were placed aboard the aircraft?

A. That was taken care of by the mechanics.

Q. But you have stated that it was your practice to see that it was placed aboard the aircraft and that it had everything from hairpins and safety pins, in your own words, Mr. Pitcher, to toilet paper, if I recall correctly. Isn't emergency equipment equally important to those items? [220]

A. It wasn't our job to install them.

Q. Well, then whose job was it?

A. It was installed by the mechanics.

Q. What mechanics? What department or what portion of the mechanical department?

A. The mechanical department.

The Court: The mechanical department.

Mr. Riley: Thank you, your Honor.

Q. (By Mr. Riley): Who in the mechanical department at Northwest Airlines in Seattle in January, 1952, would be required to see that the aircraft had flares and flashlights and emergency lighting aboard the aircraft?

A. That I don't know. It could be any number of—

The Court: Name some of them that could be, if you know.

A. I wouldn't even know, sir.

The Court: Who is the head of the department, if you know?

A. Mr. Matthews.

(Testimony of Edward K. Pitcher.)

The Court: Mr. Matthews is the head of the department. Does he have any assistants?

A. Yes, sir.

The Court: Name some of them, all of them that you know.

A. He has a number of foremen, and—— [221]

The Court: State if you know their names or so many of them as you do know, if there are any.

A. Oh, there's Jerry Whittle, and——

The Court: Jerry Whittle. Who else?

A. Bill Hewitt.

The Court: H-e-w-i-t-t?

A. I believe so, yes, sir.

The Court: Anyone else?

A. Frank Cavanaugh.

The Court: Anyone else?

A. Mr. Thompson.

The Court: If you think of any others, name them, will you?

A. There's one other, but I can't recall his name at the moment.

The Court: You may inquire.

Q. (By Mr. Riley): Mr. Pitcher, how do you know that your responsibilities have been fulfilled before an aircraft leaves, your department, are reports prepared on each individual flight?

A. There's a check sheet that we check off as we put on the supplies.

A. Who is we? A. My department.

Q. Was such a check sheet prepared for Flight 324? [222]

(Testimony of Edward K. Pitcher.)

A. It probably was, yes, sir.

Q. Would you have referred to it when you prepared this memorandum of January 24th?

A. This stuff wasn't on our check sheet.

The Court: Could you answer the question? Read the question.

(The reporter read the last question.)

A. No.

Q. (By Mr. Riley): Does your check list have on it flares, flashlights and emergency equipment of any kind? A. Only the ditching folders.

Q. Was such a report rendered in the case of Flight 324 when it left Seattle in January of 1952?

A. Did we use that check sheet?

Q. Yes. A. Yes.

Q. Was such a report prepared in your department? A. Yes.

Q. Do you have it there now?

A. No, those records are not kept for over a week.

Q. How long are they kept?

A. Only about a week.

Q. Even in the event an airplane crashes you don't keep the records?

A. Not those check sheets, they never were kept.

The Court: Read his answer so that those present can hear it against that conflicting street noise.

(The reporter read the last answer.)

Q. (By Mr. Riley): Do you know whether or not those check sheets were kept after the crash to

(Testimony of Edward K. Pitcher.)

see whether or not the aircraft had been properly supplied?

The Court: Answer yes or no.

A. I don't recall, sir. I don't remember.

Q. (By Mr. Riley): You have no idea whether or not you ascertained that your job had been fulfilled with relation to Flight 324 after it crashed?

Mr. Koch: I object to the form of the question, your Honor.

The Court: The objection is sustained. You could ask him "Do you have any idea" if you wanted to.

Q. (By Mr. Riley): Do you have any idea whether or not you checked your records to see whether or not Flight 324 had been serviced in accordance with your responsibility?

Mr. Koch: I object to that, too, about in accordance with his responsibility.

The Court: The objection is overruled.

A. Yes, I did. [224]

Q. (By Mr. Riley): And what did you determine?

A. That as far as our part of it was concerned we were all right.

Q. What do you mean by that?

A. That the proper literature was aboard the aircraft.

Q. Are you testifying now that this was the proper literature for that aircraft?

A. That the proper literature at the time was put on, yes, sir.

Q. Now, what do you mean by "proper"?

(Testimony of Edward K. Pitcher.)

A. That the literature provided for at the time was on the airplane.

The Court: When was it on the airplane?

A. It was placed on the airplane prior to the time it left Seattle.

Q. (By Mr. Riley): Now would you state once again whether or not the literature you placed aboard the aircraft was for the type of DC-4 that left?

The Court: On this flight.

Q. (By Mr. Riley): On this flight.

A. Yes, it was.

Q. Is that right when the—can you say that that is correct when the life rafts stowage as indicated on the ditching pamphlet is different than was actually the case in this particular aircraft? [225]

A. I think—

Q. Answer that, please, yes or no.

A. I don't know on that one. I couldn't answer that because I'm not sure of the type of literature that was put on. I don't recall the type.

Q. Now I'd like to make that clear. Do you know whether you had the proper literature aboard or not?

A. We had the literature that we had at the time. I just don't recall what it looked like. It's too long ago.

Q. Well, did you check after the crash or did you not to see whether or not the proper literature was aboard the aircraft?

A. I checked with the chief, yes, to make sure

(Testimony of Edward K. Pitcher.)

that all the stuff we had to put on was on, the literature was on.

Q. Was the literature that you placed aboard the literature that you have before you, Plaintiffs' Exhibit 13?

A. I couldn't say for sure because I don't recall the exact kind. There's been a number of modifications in that, or revisions, I should say.

Mr. Riley: I have no further questions, your Honor.

The Court: Any further questions? Have you in mind the possibility that the defendant may call this witness as one of the defendant's witnesses? [226]

Mr. Koch: I would like to conduct a brief examination, your Honor.

Cross Examination

Q. (By Mr. Koch): Mr. Pitcher, will you again state exactly what your job was for Northwest Airlines in January of 1952?

A. I was supervisor of equipment service.

Q. And you're that today? A. Yes, sir.

Q. Will you briefly describe the duties of your position?

A. Loading and unloading of aircraft, cleaning and supplying such items as are necessary for passenger comfort.

Q. Does cleaning refer to cleaning out the cabin and cleaning out the lavatories and that sort of thing?

(Testimony of Edward K. Pitcher.)

A. Yes, sir. That cleans the airplane from one end to the other inside and outside.

Q. And when you say "supplying", what are the supplies that are within the equipment services which your department provided?

A. Anything for the passenger comfort and convenience and for the use of the stewardess, such as forms, papers, literature and medicines, and so forth, that she would need in flight. [227]

Q. What are the things normally provided for the passengers' comfort? Are you speaking now of such items as food?

A. We also put on the food, yes, sir.

Q. You put on the food, you stocked the lavatories, is that correct?

A. That's right, berths, sheets, linen, magazines.

Q. That's under the category of Services?

A. Yes, sir.

Mr. Riley: If your Honor please, I'm going to state an objection at this time because although I've been restricted from leading the witness, even though he is now cross examining—

The Court: That objection is sustained, and the last question is leading and so it is sustained as to that. Avoid leading the witness. You can ask him to name what items or articles are included in those things, if you wish.

Mr. Koch: Your Honor, I wasn't trying to take advantage of the situation.

The Court: I realize that.

(Testimony of Edward K. Pitcher.)

Mr. Koch: It was really by summary, but I thought we could cover it rather rapidly. I'm sorry if I infringed.

Q. (By Mr. Koch): Will you name the supplies that were [228] within your jurisdiction?

A. It would take quite a catalogue, but——

Q. Just by categories, so we can get a general idea of what you did have.

A. Oh, magazines, all types of medicines, bandages, diapers, air sickness containers and hand towels, almost anything that a passenger would ask for in the airplane, soap, cigarettes.

Q. Did you handle such supplies as emergency gear? A. No, that was not our job.

Q. Were there any types of emergency gear or paraphernalia that was within your job?

A. Only the literature.

Q. And is Plaintiffs' Exhibit 13, that folder, within the literature that was within your department?

A. This is the type we supplied the airplanes, yes, sir.

Q. That was one of your department's responsibilities? A. Yes, sir.

Q. Within what department's responsibility would the emergency gear such as the life vests, masks, emergency clothing, life rafts, Gibson girl, fall?

A. That's installed by the mechanical department.

(Testimony of Edward K. Pitcher.)

Q. What department is in charge of servicing that type of emergency gear?

A. The mechanical department. [229]

Q. Does that include restocking the plane with such gear? A. Yes, sir.

Q. Now, you have testified concerning Plaintiffs' Exhibit No. 12, which is a group of manual provisions of the defendant Airline. Do you have that exhibit before you? A. Yes, sir.

Q. Will you examine that exhibit and tell me the types of airplanes to which it refers?

A. This is a DC-4 type.

Q. Then are all Northwest Airlines DC-4's covered by the provisions of those manual pages?

A. That I couldn't answer. I'm not acquainted with all the types.

Q. Do you know whether that exhibit covers aircraft not owned by Northwest Airlines but leased by them from other air carriers?

A. No, these are all Northwest.

Q. Northwest owned planes, do you mean?

A. (Witness nods his head.)

Q. Now, in Exhibit A-15, which is the letter from Mr. Wean to you and a sketch attached, does this letter and sketch refer to planes owned by Northwest Airlines?

A. No, sir. This is a TWA plane.

Q. TWA, is that what the reference is at the bottom of the [230] sketch, "TWA 543-601"?

A. Yes, sir. That would be the ship number.

Q. The ship number of TWA planes. Are the

(Testimony of Edward K. Pitcher.)

interior arrangements—I think Mr. Riley has referred to them as configurations—the same on the TWA planes as they are on the Northwest Airlines DC-4's? A. Not exactly.

Q. You say they are not exactly the same?

A. No, they're not.

Q. When Northwest Airlines leases a plane such as TWA Ship No. 543-601, do you know whether it is the practice of the company to make——

Mr. Riley: I object to the question. He's obviously not qualified to answer it.

Mr. Koch: Your Honor,——

The Court: If he knows.

Mr. Koch: It's within the scope of the direct examination.

The Court: Just ask him if he knows.

Q. (By Mr. Koch): Do you know whether Northwest Airlines conforms the leased TWA planes to be standard with the Northwest Airlines planes in the arrangements, in the configuration in the cabin?

A. As far as the cabin goes, that's the only part I could answer for. They were not the same as ours.

Q. Were they made the same after Northwest Airlines took possession of the planes under the lease? A. No, not that I know of.

Q. They were checked?

A. Of course I don't know, they came out to Seattle here, but I don't know what they did or anything like that.

(Testimony of Edward K. Pitcher.)

Q. When they came out to Seattle were they still different from Northwest Airlines DC-4's?

A. Oh, yes.

Q. Do you know whether those differences were brought to the attention of the crews of the TWA planes?

A. Oh, we had supplemental bulletins to the manual on that.

Q. Supplemental bulletins that what?

A. To the manual on that.

Q. Supplemental bulletins to the manual?

A. Describing the type of airplane, yes.

Q. That would cover — do I understand that those supplemental bulletins would be added to the manual and would apply only to certain planes?

A. I believe so.

Q. Is there a supplemental bulletin attached to the manual pages which are Plaintiffs' Exhibit No. 12?

Mr. Riley: I think he's gone beyond the scope of the direct examination, if the Court please. [232]

The Court: It begins to look that way.

Mr. Koch: Your Honor, this is exactly the subject matter that was covered yesterday afternoon. I can read the questions to the——

The Court: All right. Read one of them, will you?

Mr. Koch: All right, sir.

The Court: I wish you to have in mind that if you go into the subject now the Court will not wish you to go into it again if you later find an occasion

(Testimony of Edward K. Pitcher.)

for recalling this witness. You would have the right to go into it fully with this witness as your own witness. If now you go into part of it and save part of it, you are running the risk of wanting to go into it the second time, but you may proceed.

Mr. Koch: Your Honor, my intention, so the Court will not think that I'm misusing the time here, is to use this witness today and not to recall him. If there is further testimony on this subject I anticipate that it will come from other witnesses, so I'm questioning him now because I do not intend to recall him.

The Court: You may proceed, within the scope of the direct examination.

Mr. Koch: You asked that I mention sample [233] questions from yesterday afternoon, your Honor.

The Court: That is sufficient. I just wished you to refer to them. The objection is overruled. I just wished you to refer to them and make sure that that is the case. The objection is overruled.

Mr. Riley: If your Honor please, one of the objections that Counsel had to the subpoenas duces tecus was that they couldn't compile the records and their manuals as of January, 1952, that it was an unduly onerous burden, and the subpoenas duces tecum to which they state they have purportedly complied and to which their company complied by delivering to him these documents which are now on Counsel table and from which this exhibit was taken were records of their operations manual at that

(Testimony of Edward K. Pitcher.)

time, and it seems to me that we're being placed in a very difficult position because they have purported to have complied with that when those documents were ordered produced earlier and they now come in and attempt to examine with relation to documents which they have not produced and which they did not deliver pursuant to the subpoena duces tecum, and I think it's unfair to the plaintiffs.

The Court: What is the situation?

Mr. Koch: Your Honor, the materials that we have supplied are those which the plaintiff has [234] requested from defendant in a series of ways. We supplied a great number of materials through a motion to produce. We supplied additional materials voluntarily because the plaintiffs asked us to give them specific things. We gave them particular manual pages which they asked us to give.

Now, the particular issue here, your Honor, didn't become an issue until yesterday morning when the Court permitted the plaintiffs to amend the pleadings. At that point the plaintiffs stated that the emergency gear was not supplied as it should have been and was not put where it should have been put and in various respects didn't comply with Civil Aeronautics rules and regulations, and in an attempt to prove that Mr. Riley through witnesses in whose jurisdiction the matters in question do not fall has elicited information and has put in evidence inspection pages which refer to particular aircraft.

They asked for the manual pages, we gave them the manual pages. There are additional supple-

(Testimony of Edward K. Pitcher.)

mental pages that govern craft that have been leased by Northwest Airlines and don't fall within the normal Northwest Airlines operating procedures. I've never seen them, I don't now have them. They didn't become an issue until this point was raised yesterday. [235]

The Court: On that point, what response do you have to that last observation, that they did not become an issue, and I take it he means were not covered by any demand you made previously for production, nor did they become material until the pleadings amendment of the beginning of this trial?

Mr. Riley: I'm looking first of all to the original subpoena which was served.

The Court: Read silently the description of the material sought in that subpoena.

Mr. Riley: And in later subpoena duces tecum what I asked for was, "All applicable components of the Northwest Airlines manual and Northwest Airlines DC-4 operating manual and Northwest Airlines maintenance manual as maintained by Northwest Airlines on or about January 19, 1952."

Now, back in February when I took Mr. Peterson's deposition I subpoenaed those documents just in that form, and we came in here some time ago on a motion to comply with the subpoena and I was informed that they would produce those, and these are the documents that were produced.

Now I'm going back to try to find my original subpoena so I can direct your Honor's attention to that, which is in the court file. I didn't ask for

(Testimony of Edward K. Pitcher.)

[236] any particular manual pages. I had absolutely no way of asking for particular pages because I had never seen them before and I had to describe them generally.

The Court: Is your objection confined to particular pages of the manual book?

Mr. Koch: Your Honor, the Court ruled just yesterday, I believe it was, or perhaps the first day, that we wouldn't be required to decide which were the applicable pages. It's almost impossible for us to go through eight or ten different manuals and decide which are the pages that the other side will consider material to this lawsuit, and the Court specifically said that that request would have to come from the plaintiffs, that it wasn't for the defendant to determine what were the relevant or the applicable pages.

Now, this is a perfect illustration of why——

The Court: The book itself, though, why was not the subpoena sufficiently broad enough to cover the book that contains the material you now speak of?

Mr. Koch: It isn't in any book, your Honor. These pages are maintained currently and the obsolete pages are removed from time to time.

The Court: I thought you were making the point that separate pages were not described. [237]

Mr. Koch: They asked us to produce—I am making that point. They asked us here within the last week to reproduce as of January of 1952 the manuals as they then existed. That's an impossible burden. But as the points have become issues in the

(Testimony of Edward K. Pitcher.)

case we have obtained and had printed up from old plates that the company has retained excerpts that were applicable at that time.

Now, Mr. Riley has never asked for this specific material. He's asked for it in general terms, as he acknowledges. We couldn't possibly know that this issue would become relevant until Mr. Riley made it an issue yesterday by amending his pleadings.

The Court: I am just a little bit inclined against that construction of it. Mr. Riley, as I understand, had a right to and was seeking anything that is related to this subject, and I doubt if he was required to be so specific as to do this, and if I thought the penalty should be that you not be permitted to use this material now I would be inclined to sustain the objection, but I would like to hear further from Mr. Riley on that.

Mr. Riley: Well, our problem is, as your Honor can appreciate, that we having served on the airline a number of subpoenas duces tecum directed to [238] the airline and to the airline through these individual officers directing them to produce these various records, their company manuals, and so forth, and the defendant resists those and has moved to quash them, and as I understand the Court's order, with which we are now bound, that we have to work with only those documents that he has chosen to deliver so far and those documents alone, and we have subpoenaed them, and it just seems to me to be giving the defendant—

The Court: I think so, and I think you ought to

(Testimony of Edward K. Pitcher.)

submit those to him before you go on with this. You may reserve your question, but submit those documents that you——

Mr. Koch: Your Honor, I don't even have them. I don't have them. I'm just bringing out from the witness that they do exist. This just came up yesterday afternoon and we're now attempting to get them, but I don't have anything that I'm withholding, your Honor.

Mr. Riley: If the Court please, this did not just come up yesterday afternoon. The first time I served a subpoena on this was in February, and it was served on Mr. Peterson and he was required to attend a deposition and was asked to produce those [239] documents.

Mr. Koch: What documents?

Mr. Riley: It was again served——

The Court: The documents of the classification you are now speaking of——

Mr. Koch: Your Honor, that's where the difference of opinion is. We have attempted to give everything we had. The language in which they have been requested didn't make possible an exact determination. I would like Mr. Riley to read the paragraph of any subpoena that he has which he thinks covers the material that is involved now.

The Court: Read that one more time.

Mr. Riley: "All applicable components of Northwest Airlines manual and Northwest Airlines DC-4 operating manual and Northwest Airlines mainte-

(Testimony of Edward K. Pitcher.)

nance manual as maintained on or before January 19, 1952.”

That identical language was used first in February in a subpoena served, as the court file will show, on Mr. Peterson for the purposes of deposition; again on March 7th to the airline through the statutory agent for process, and later directed to Mr. Middlestat and Mr. Curry.

Mr. Koch: Your Honor, these were all served within the last few days. That very paragraph that [240] Mr. Riley is reading to you from was in a subpoena which he served on March 20th or 21st, I’m not sure of the exact date, requesting all applicable components of manuals which are five years old. At that point if we hadn’t already provided it, and we thought we had, it was absolutely impossible to revise current manuals to a status of five plus years ago. We thought that we had complied by giving him the material as we have gone along in great quantities. It’s all here, and——

The Court: Mr. Koch, if you have any of that material now or if you think by conferring with this witness in private you could get some more material that you have not supplied to him up to this time, the Court directs that you suspend the examination of this witness on that point now. After discussing the matter with this witness or anyone else, locate that other material and submit it to Counsel under that subpoena, so he will know what it is before he proceeds.

(Testimony of Edward K. Pitcher.)

Mr. Koch: I don't know that we have it, your Honor. We've sent for it, but——

The Court: The objection is sustained. You have leave to suspend your examination of this witness on this point until you've had an opportunity to [241] discuss it further with him or somebody else and see if you can locate any papers, and if you do, surrender them to the plaintiffs' Counsel, after which the Court will give you further opportunity to inquire of this witness if you do that within a reasonable time and before the defendant's case in chief is rested.

Mr. Koch: The papers have been located, your Honor. They are being flown out here, and as soon as we get them we will comply with the Court's direction.

The Court: Do that. You will suspend this inquiry until Counsel gets a chance to see what you may have now or hereafter. I wish you to make a careful note of this. I do not wish to have a long discussion in the future about what we were talking about. Will you mark your subpoenas about what material is covered, and Mr. Koch, I ask you to so identify the material so that we will not have any long, extended discussions about the identity of it.

You may now ask him some other questions on some other subject other than this particular subject.

Q. (By Mr. Koch): Mr. Pitcher, on direct examination you testified on two types of Mae West jackets, life vests, which were made by different

(Testimony of Edward K. Pitcher.)

companies, but were they [242] both of the same general type, do you know?

A. They're both the same general type, yes.

Q. Both the vest type?

A. Well, they're both what I'd call a Mae West, yes.

Q. But with armholes that go through each arm and tie? A. That's right, and tie straps.

The Court: With a tie strap in front after extending downward from the armpits or from the back across the midsection of the torso, human torso?

A. Yes, sir.

The Court: Frontwards, and with long enough ties on them that they can be brought together in front and tied?

A. Yes, sir.

The Court: Or snapped in some manner?

A. Yes, sir.

Q. (By Mr. Koch): And were they both inflated by pulling that ripcord? A. Yes.

Q. They inflate automatically, is that correct?

A. Yes.

Q. Did I understand you to testify that in January of 1952 only one of these types was then in use by the defendant?

A. As far as I know there was. [243]

Q. Does the description in Plaintiffs' Exhibit 13, the folder, cover the type of vest that the company was using at that time?

(Testimony of Edward K. Pitcher.)

A. This is more or less just a general description. It would cover it at that time, yes.

Q. Now, there was some confusion over the folder, Plaintiffs' Exhibit No. 13. Was it your testimony that you did not know whether this particular folder was the folder which the company was using in January of 1952?

A. Yes, sir.

Q. Why is there that uncertainty in your mind?

A. This folder has been revised a number of times since I've worked for the airline, and I don't know just exactly which revision was in use at that particular time.

Q. Was the folder that was in use at that time, was there more than one folder which was in use at that time?

A. I think there was only one folder in use at that time.

Q. Did that folder apply to all over water flights of the defendant?

A. We used them on all over water flights, yes, sir.

Q. Would there be any possibility that the crew would—strike that. Does Plaintiffs' Exhibit 13, the folder, set forth the location of emergency equipment in the diagram? [244]

The Court: Diagram showing what part of the airplane?

Mr. Koch: Of the interior of the cabin, your Honor.

A. In general, yes.

Q. (By Mr. Koch): Was there any method for

(Testimony of Edward K. Pitcher.)

informing the passengers of any respects in which the location of emergency gear——

Mr. Riley: I object to that question.

Mr. Koch: I haven't finished it yet.

The Court: Do not answer the question until Counsel finishes the question.

Q. (By Mr. Koch): ——in which the information on the emergency gear differed on a particular aircraft?

Mr. Riley: I object because he's stated what his capacities are. He didn't have anything to do with the passengers.

Mr. Koch: I haven't asked anything about the passengers, your Honor. The question is directed to what if anything the company did to explain the use and purpose of the folder.

Mr. Riley: I ask that the question be re-read.

The Court: Will you read—I got the impression that other than that folder which he calls [245] literature he had nothing and his department had nothing to do with instructing passengers. I think he said that many times, has he not?

Mr. Koch: I think he has said that.

The Court: Will you read the question.

(The reporter read the last question as follows: "Was there any method for informing the passengers of any respects in which the location of emergency gear—in which the information on the emergency gear differed on a particular aircraft?")

The Court: The objection is overruled.

(Testimony of Edward K. Pitcher.)

A. I believe there is, but it's not my department that advises them.

Q. (By Mr. Koch): Well, if you know will you tell us what it was?

A. You mean who would advise the flight crews on the location of the emergency equipment? That would come from their department heads.

The Court: He asked you can you give the information which those department heads would impart or cause to be imparted, if you know what it was, if you have a reasonable belief that you know what it is. [246]

A. There would be a bulletin issued on it that they all get.

The Court: Who all would get?

A. The flight crews and the various ones concerned with it.

The Court: Would the passengers get it? That is what I believe is involved, is it not?

Mr. Koch: Yes, your Honor.

The Court: State if you know, would the passengers get it?

A. I don't know.

The Court: Do not state if you do not know it, but if you do, give it.

A. I don't know. That's way beyond me.

The Court: Very well. Ask him something else. We will close at about 4:30 or a little before if you get through.

Mr. Koch: Thank you, your Honor.

Q. (By Mr. Koch): Do you know whether

(Testimony of Edward K. Pitcher.)

flares, flashlights and that type of equipment were actually standard equipment on Northwest Airlines overseas DC-4's?

A. I have nothing to do with that stuff.

Q. You don't know if they were on board the craft or not? A. No.

Q. Referring, Mr. Pitcher, to Plaintiffs' Exhibit A-15, [247] the sketch, and noting the location of two 20-man life rafts and the snap curtain, is the snap curtain a curtain that's across the door?

A. You mean the——

Q. The passenger door.

A. No, that was not the main cabin door.

Q. Well, do you see where the words read "Main Cabin Door"? A. Yes.

Q. The little line with the arrow sticking out looks like the door is partly open. Is that correct?

A. Yes.

Q. Where in terms of the door is this curtain?

A. It would be just to the right as you step in the cabin.

Q. At right angles to it?

A. Right across the ship, yes, at right angles.

Q. It would be to your right as you entered the cabin of the plane? A. That's right.

Q. What would be above this curtain, if you know?

A. I believe that curtain was attached to the overhead. I'm not sure, but it seems to me that that was attached to the overhead.

The Court: That is not exactly responsive. If

(Testimony of Edward K. Pitcher.)

you know, what if anything would be placed above [248] that curtain? That does not call for any comment on the curtain. That is already assumed. Everybody for the purpose of this question has lost interest in the curtain.

A. What would be above the curtain?

The Court: Yes.

A. There would be nothing above the curtain.

The Court: That answers the question.

Q. (By Mr. Koch): Where in relation to the curtain are the life rafts?

The Court: If you know.

A. They were in back of the curtain.

Q. (By Mr. Koch): They were behind the curtain? The curtain covered the life raft?

A. Yes.

The Court: Those connected with this case are excused until tomorrow at ten o'clock and may now retire. Be back here at that time for further interrogation.

Mr. Riley, I wish you would have a very clear and concise list of all the records of every name and nature that you have asked for in the past and have that list so you can very readily refer to it in case you anticipate the possibility of making an objection in the future to the use by defendant or inquiry by [249] defendant concerning any records not disclosed.

Mr. Riley: Thank you, your Honor, I will do that.

The Court: I wish Counsel on both sides to know

that this Court is one, among many others I suspect, who believes that the very heart of the discovery procedures is the motion for production of documents and that it should be in the greatest liberality instead of the greatest illiberality complied with. The requirements and provisions of the rule ought to be complied with by both sides, and I wish you to both be very certain that you do so in this case because this case is one case, a good case to show the need for the use and the wisdom of the use of certainty and very definite dealing in connection with the records.

Those connected with this case are excused until tomorrow morning at ten o'clock.

(Thereupon, at 4:30 o'clock p.m., a recess herein was taken until 10:00 o'clock a.m., Thursday, March 28, 1957.) [250]

Seattle, Washington

Thursday, March 28, 1957, 10:00 o'clock a.m.

(All parties present as before.)

The Court: All are present. You may proceed.

Mr. Riley: If your Honor please, I would like permission to proceed without Mr. Murphy, who is engaged with a witness who has come to Seattle last night from Alamogordo.

The Court: Mr. Murphy is associate Counsel who has been sitting at Counsel table with you, is that right?

Mr. Riley: Yes, your Honor.

The Court: That is agreeable to the Court. You may proceed.

Mr. Riley: I wish to make an apology to the Court and to Counsel for a partially erroneous statement I made last evening relating to the subpoenas which I stated to the Court had been issued to the defendant airlines, in the language which I cited to your Honor, wherein I stated that I had subpoenaed as early as in February all applicable components of Northwest Airlines manual, Northwest Airlines DC-4 operating manual and Northwest Airlines maintenance manual as maintained by the defendant on [251] or about January 19, 1952, I was under an apprehension, and an honest one, if the Court please, that I had used that language at the time I subpoenaed Mr. Peterson for a deposition in February, and on reviewing my records I find that that was incorrect. I did not use that language until this month after the 12th. I didn't conform my copies of the subpoenas, so I'm not actually certain of the first time they were used. However, they were used in three different subpoenas directed to Mr. Curry, Mr. Middlestadt, Mr. Sanders, and I believe Mr. Judd, that language, and to that extent my statement to the Court was in error.

This morning Mr. Koch has received some additional portions of the airline's manual and I haven't had an opportunity to see it all. Our position would be, however, that if Counsel intends to use them I think that we should be entitled to know whether or not he has all of the DC-4 operating manual and their maintenance manual or whether they are just using the parts that they want since defendant has

taken the position that anything in the company's records that's not within a hundred miles of this court is beyond the jurisdiction of this court. I of course assert that that is incorrect, that the defendant is before the court and that the defendant should be ordered and [252] has a responsibility——

The Court: You have a right now to demand any record that you know the defendant possesses or have good reason to believe it possesses, whether you have ever previously demanded it or not.

Mr. Riley: I understand that, your Honor.

The Court: And so does opposing Counsel have the same right respecting any records or any written data that is in your possession other than the written data made by Counsel acting as Counsel in the case touching his own work effort and as an attorney in the case.

That is all I have to say further about that. There seems to be nothing before the Court right now unless there is being some use made of it presently and you wish to point out what that thing is as to which you seek the Court's ruling at this time.

(There was further discussion with respect to the documents referred to.)

The Court: Very well. You may proceed, and I ask the witness who was on the stand yesterday to resume the stand. I believe that was Mr. Pitcher.

• EDWARD K. PITCHER

(Resumed the stand.)

The Court: I want to ask Mr. Pitcher one ques-

(Testimony of Edward K. Pitcher.)

tion that is not very important to Counsel but [253] that might help me understand his statements a little better.

Mr. Pitcher, in what localities did you spend most of your time between ages ten and twenty-five, between your ages——

A. Ten and twenty-five?

The Court: Yes. Where did you live?

A. In Michigan, sir.

The Court: Principally during that time?

A. In Michigan, up to—from ten to nineteen I was in Michigan, and from nineteen to twenty-two years I was in the Navy. From twenty-two years——

The Court: How many years were you in the Navy?

A. Four years, sir.

The Court: And what else?

A. And after twenty-two years I've been in Seattle and I've been in Seattle since.

The Court: Ever since age about twenty-two?

A. Twenty-two.

The Court: You may inquire. You have a singular inflection and I am not always sure that I understand you. You may proceed. [254]

Cross Examination—(Continued)

Q. (By Mr. Koch): Mr. Pitcher, yesterday as I recall you testified that Plaintiffs' Exhibit 12——

Mr. Koch: I wonder if you would hand that to him.

(Testimony of Edward K. Pitcher.)

(The exhibit was handed to the witness.)

Q. (By Mr. Koch): —applied to aircraft owned by Northwest Airlines only. Is that correct?

A. Yes, sir.

Q. And I understood you to further state that there were modifications of that manual provision with respect to leased aircraft.

A. There would be a supplement to it.

Q. A supplement to what?

A. Well, it would be a supplementary bulletin that would tell us how the airplane was set up inside, the configuration of the airplane.

Q. You mean how it differed from the craft that Northwest Airlines owned?

A. How it differed from Northwest, yes, sir.

Mr. Koch: Mr. Bailiff, I wonder if you would hand to the witness Plaintiffs' Exhibit 13.

The Court: That will be done.

Mr. Koch: Excuse me, I guess it's A-15 [255] that I mean.

The Court: Defendant's A-15 relates to Wean's report which this witness used in respect to his relationship with Mr. Matthews.

(Defendant's Exhibit No. A-15 was handed to the witness.)

Q. (By Mr. Koch): Now, Mr. Pitcher, can you tell us whether the sketch which is a portion of A-15 sets forth the configuration according to the Northwest operating manual, Plaintiffs' 12, or according to the TWA leased bulletin modification?

A. It would be more on the supplementary copy

(Testimony of Edward K. Pitcher.)

because the interior arrangement of this aircraft was different than ours.

Mr. Koch: I have no further questions.

The Court: Anything on redirect?

Redirect Examination

Q. (By Mr. Riley): Mr. Pitcher, you have discussed this matter with Counsel for the defendant airline, haven't you?

A. I don't know what you mean by that.

Q. I mean you have consulted with Mr. Koch and you have seen the supplemental materials?

A. No, sir, I haven't. [256]

Q. Have you never seen the supplemental materials? A. No, sir.

Q. Yesterday you were not clear whether or not this cabin configuration was different than the Northwest Airlines manual.

The Court: Ask him. You have no right to state as a fact your last statement.

Mr. Riley: Thank you, your Honor.

Q. (By Mr. Riley): Mr. Pitcher, yesterday did you know whether or not the cabin configuration, cabin arrangement, of Ship 601, which was Flight 324 of January 19, 1952, did you know that the cabin configuration was different from Northwest Airlines' operating manual? A. Yes, sir.

Q. All right. Did you know that there was a supplemental document to the manual other than the one you had before you yesterday?

(Testimony of Edward K. Pitcher.)

A. I knew there was a bulletin at that time, a supplementary copy, yes.

Q. Did you know what that supplemental bulletin provided?

A. No, I don't recall what the bulletin specifically said. I remember at the time those ships were out, all the different kinds of airplanes, there were bulletins sent out showing us the way they differed, such as the water systems, and so forth.

Mr. Riley: May this document be marked for identification?

The Court: It may be. I would make a particular amendment of what I suggested to both Counsel about the right of each to demand of the other a document. That means that you are supposed to deliver into the hands of the person making the demand for his further consideration and disposition subject to the Court's further rulings if he should ask to make a disposition of it, but it is supposed to be in his possession when compliance is made by the one upon whom demand is made.

Mr. Riley: Yes, your Honor. Is that permissible with you, Mr. Koch? I had that document here, and——

The Court: What I mean is it is in your custody and it is up to you to ask what further will be done with it, and if you now ask that it be marked is an exhibit, that will be done.

The Clerk: Plaintiffs' Exhibit 14.

(A loading data sheet was marked Plaintiffs' Exhibit No. 14 for identification.)

(Testimony of Edward K. Pitcher.)

The Court: And the same right will be available to Mr. Koch respecting any similar situation as to records when he is conducting an examination.

You may proceed.

(Mr. Koch examined Plaintiffs' Exhibit No. 14 for identification.)

The Court: Does anyone suggest a name of this instrument reasonably reflecting the nature of its information?

Mr. Koch: It's called a loading data sheet, your Honor.

The Court: Loading——

Mr. Koch: Loading data sheet.

The Court: Loading data sheet.

Mr. Riley: It is dated January 8, 1952.

The Court: January 8th. You may proceed.

Mr. Riley: I offer Plaintiffs' Exhibit 14 in evidence at this time, your Honor.

Mr. Koch: I object to its introduction, your Honor. It hasn't been identified, and by its very caption, Loading Data Sheet, I hardly think it's within this witness' knowledge, and therefore I didn't offer it myself because I don't think it's properly introduced in evidence through this witness.

The Court: Is there anything in the record as to when it was issued, irrespective of the date, and for what time it was in use, if it ever was? Is there anything in the record relating to that?

Mr. Riley: No, your Honor, except Counsel has stated in open court this morning that this is

(Testimony of Edward K. Pitcher.)

supplemental materials to the Northwest operating manual and that he hadn't been able to deliver it and that he just received it from the defendant last night.

The Court: Do both Counsel agree that this was in effect on the date of this accident?

Mr. Koch: I don't know, your Honor, and furthermore I don't say that's part of the operating data. I have the bulletin here that says that it's part of the operations manual, but——

The Court: Have you seen the bulletin or have you made any demand that covers the bulletin?

Mr. Koch: He's seen it. It's been here for both of us.

Mr. Riley: He just brought it in this morning and I've seen it. The documents that I examined, I would demand and request that they be delivered to me now.

The Court: Do you make a demand for the production of it at this time?

Mr. Riley: I do demand, your Honor.

The Court: Very well. Look at them and see if you wish those marked. [260]

Mr. Riley: I will ask that they be marked. Since they are separate sheets, I presume——

The Court: It would be appropriate for Counsel to consider whether it is needful to separate them. Everyone would favor a minimum number of exhibits.

Mr. Koch: It's all Bulletin 144. It's all the same bulletin, your Honor.

(Testimony of Edward K. Pitcher.)

The Court: Then there is no need of separating it, is there?

Mr. Riley: I don't believe so, your Honor.

The Court: If one sheet is admissible, the whole thing is admissible.

Mr. Riley: Very well, your Honor, and it should be marked for identification. It is captioned DC-4 Bulletin No. 144 dated August 29, 1951.

The Court: State the number of the bulletin.

Mr. Riley: DC-4 Bulletin No. 144 dated August 29, 1951.

The Court: Let it be marked.

The Clerk: Plaintiffs' Exhibit 15.

(DC-4 Bulletin No. 144 dated August 29, 1951, was marked Plaintiffs' Exhibit No. 15 for identification.)

Q. (By Mr. Riley): Now, Mr. Pitcher, examining what has [261] been marked as Plaintiffs' Exhibit 14, can you identify that document and tell me what it might be?

A. Well, it's a loading data sheet that gives the weights of various items that are in the aircraft and the center of gravity, fuel tanks capacity and weight, and so forth.

The Court: Do you mean that that data is as to some imaginary freight item or do you mean it is a record of some particular items which were shipped on board defendant's aircraft?

A. No, sir, it's a table that gives the weights of various——

The Court: Permissible weights acceptable for

(Testimony of Edward K. Pitcher.)

carriage by the aircraft, or what do you mean?

A. For figuring the weight of the aircraft, your Honor.

The Court: It is a rule of thumb for figuring the weight of transportable items to be transported on an aircraft, is that right?

A. Yes, sir. It has the weight of life-saving equipment, it has the tank capacities in pounds. It's for figuring the weight and the——

The Court: It is a freight computation——

A. Or slide rule.

The Court: Slide rule? [262]

A. Yes, sir.

Q. (By Mr. Riley): Is that a part, or can you tell whether that was a part of the DC-4 operations maintenance manual for Northwest Airlines?

Mr. Koch: Your Honor,——

A. No, I wouldn't.

The Court: For what period? You have not stated that, have you, in your question?

Mr. Riley: I beg pardon, your Honor.

The Court: I did not hear a time of effectiveness stated in your question.

Q. (By Mr. Riley): Can you tell from the document before you the effective date of the document? Would you please examine it and ascertain whether it can be shown what the effective date of it is?

A. It's dated as January 8th, 1952.

Q. January 8th, 1952. Does it relate to all aircraft in the Northwest Airlines system or just

(Testimony of Edward K. Pitcher.)

specific aircraft? A. Specific aircraft.

The Court: I remind Counsel on both sides the date alleged is January 19, 1952, as the date of this accident.

Mr. Riley: Thank you, your Honor.

The Court: That is the date this Court is [263] interested in in this case. I am not interested in any other date except in so far as that information may be relatively connected with the information that is needed in this action respecting January 19, 1952.

Mr. Riley: Thank you, your Honor.

Q. (By Mr. Riley): Does Plaintiffs' Exhibit 14 deal with specific aircraft in the system or all aircraft in the Northwest system on the effective date of the document before you?

Mr. Koch: Your Honor, I must object to the further questioning of this witness on these exhibits because by his own testimony and the nature of his duties—we have a room full of experts that can provide all this information, and it's a waste of the Court's time and it's an imposition on the witness to ask him questions that are completely beyond his activities with the company.

The Court: Does that statement cause examining Counsel to at this time ask that any other witness be used or that he have the opportunity of using any other witness, or do you insist that you have a right to ask this witness these questions?

Mr. Riley: Well, Counsel didn't object when we asked this witness with respect to those portions

(Testimony of Edward K. Pitcher.)

of the manual he had seen fit to deliver to us earlier, [264] and——

The Court: The objection is overruled. Proceed.

Mr. Koch: Your Honor, I did object. I've been objecting to the fact that this witness is testifying on matters not within his knowledge from the beginning.

The Court: The objection is overruled. The Court does not understand the witness is giving any informative answers without having knowledge of his answer. You may proceed.

Mr. Riley: Would you read the last question?

(The reporter read the last question as follows: "Does Plaintiffs' Exhibit 14 deal with specific aircraft in the system or all aircraft in the Northwest system on the effective date of the document before you?")

A. Well, I have no occasion to use a sheet of this type. I couldn't answer that, as to whether it is or not. It seems to have on here several ship numbers.

Q. (By Mr. Riley): What ship numbers does it refer to?

A. Ships 404, 403, 601, 602, 608, 650, 653, and 673.

Q. Do you know whether or not 601 was the same aircraft [265] which crashed at Sandspit on January 19, 1952?

A. I presume it would be 601. It's listed here, Ship 601.

(Testimony of Edward K. Pitcher.)

Q. Does it——

The Court: What is there about “here” that identifies what you refer to as “here” with the aircraft which crashed upon the occasion alleged in this case?

A. To my knowledge we only had one ship 601.

The Court: What ship had a 601, if you know, with reference to the one that crashed or is alleged to have crashed at Sandspit?

A. That was Ship No. 601.

Q. (By Mr. Riley): Does Plaintiffs’ Exhibit 14 which you have before you illustrate the cabin configuration of Ship 601 on the effective date of that instrument, January 8, 1952?

A. This is a loading sheet. It shows only the way the ship is marked off in sections for loading.

Q. Does it show the locations of the seats?

A. It shows some seats in it, yes.

Q. I direct your attention to the center bottom portion of the sheet and I ask you to read to the Court what the sheet states about the location of emergency equipment in Ship 601. [266]

A. It says, “The last two seats on the right side used to store emergency gear.”

Q. Now, where are the last two seats on the right side? A. In Section J.

Q. According to the schedule——

Mr. Koch: Your Honor, I object to his testifying from the contents of an exhibit which is not in evidence.

The Court: The objection is sustained.

(Testimony of Edward K. Pitcher.)

Mr. Riley: I now offer the exhibit in evidence, if your Honor please.

The Court: Which exhibit?

Mr. Riley: Plaintiffs' Exhibit 14, in evidence, having been identified as in effect on January 8, 1952.

Mr. Koch: I object to its introduction, your Honor. I don't believe that it has been properly identified by this witness. We don't know when it became effective. There is no testimony that it's part of Supplemental Bulletin 144 or that it is the instrument that is said to modify for TWA planes the information otherwise contained in Northwest operating manual provisions of Plaintiffs' Exhibit No. 12.

The Court: Do you care to recount what this witness has said regarding the effectiveness of this [267] exhibit on the day of the accident? Will you recount the evidence that you rely upon now in the record establishing or tending to establish that fact? By "recount it," I mean tell it again.

Mr. Riley: It's my understanding that he has identified it as a portion of the manual, a supplementary document relating to the ships which are presumably——

The Court: He said it related, as I understood, to 601, and then said that the only——

Mr. Riley: Yes, and then said that 601 was the ship which crashed, which is the subject matter of this action.

The Court: But I do not recall him saying in

(Testimony of Edward K. Pitcher.)

that case when it was in effect with reference to the 19th of January, 1952. If you recall some evidence on that will you please relate that evidence now, refer to it, point it out?

Mr. Riley: I think we're entitled to—because January 8th and January 19th are less than two weeks apart, that the document was applicable.

The Court: Have you tried to find out from this witness if he knows whether or not it was in effect?

Mr. Riley: If the Court please, I will [268] inquire further.

Q. (By Mr. Riley): Can you tell, is there anything on the document marking the document as having been superceded or cancelled?

A. I don't know anything about this document. I wouldn't have——

The Court: Answer that question.

A. The only thing I see on here is the date up at the top, the date of January 8th.

The Court: Is that a cancellation date or the promulgation of effectiveness date, if you know?

A. I wouldn't know.

The Court: You may inquire.

Q. (By Mr. Riley): Would you read the language at the top of the page relating to January 8, 1952?

The Court: Read it silently, do not read it out loud.

(Brief pause.)

Q. (By Mr. Riley): What does it say?

The Court: No,——

(Testimony of Edward K. Pitcher.)

Mr. Riley: Pardon me, Your Honor.

Q. (By Mr. Riley): Having read the same can you tell whether or not it was effective on January 8, 1952, or is deemed cancelled on January 8, 1952?

The Court: You should answer yes or no to [269] that question.

A. Well, I don't know, Your Honor, because I have never seen this sheet. I have nothing to do with the sheet.

The Court: That is not the question before you. Just answer yes or no after considering this question. Will you read the question, Mr. Reporter.

(The reporter read the last question as follows: "Having read the same can you tell whether or not it was effective on January 8, 1952, or is deemed cancelled on January 8, 1952?")

A. I'd say it was effective on January 8th.

Mr. Riley: I think that should be sufficient, Your Honor. I ask the Court to examine the document. I believe that there's nothing showing on the face of it showing that it was cancelled, there's nothing showing when it was cancelled, and it can be presumed to be effective on January 19th. The defendant will have every opportunity to show that it wasn't if that's the case, which I'm sure it's not.

The Court: Mr. Koch, do you wish to comment on the correctness of that rule of law as a presumption of continuation in effect of something

(Testimony of Edward K. Pitcher.)

established to [270] have been at one time in effect?

Mr. Koch: Well, as far as I can tell from the interrogation, the date appears on the top of the page. That's all that appears. This is not a manual provision, Your Honor. It's called a loading data sheet, and a loading data sheet may be relevant for some things but I don't see how it could be said to be a supplemental bulletin when we've had what has been separately identified as a supplemental bulletin marked and not introduced. Now,——

The Court: Mr. Riley, have you established by the testimony of this witness that he acted in any way under the authority and provisions of that exhibit?

Mr. Riley: He stated yesterday, Your Honor, or whenever he was first on the stand, that he was familiar with these manuals; he stated that it was his function to see that the ditching pamphlets and folders which were installed on the aircraft were the pamphlets which were correct for the particular configuration of aircraft.

We have here a document which shows the configuration of Ship 601. I state——

The Court: I thought he said it was a loading data sheet.

Mr. Riley: He testified also that it shows [271] the cabin configuration of Ship 601.

Mr. Koch: For loading purposes. It's a loading data sheet. It isn't part of the manual and he

(Testimony of Edward K. Pitcher.)

hasn't testified that he acted under it or that he knows anything about it.

Mr. Riley: Oh, let's not play on words, Counsel. I mean he——

The Court: I am not satisfied of the record on that point. The Court reserves ruling until you have satisfied the Court that there is proof by some witness, which the Court understands to be direct proof, that to his personal knowledge by reason of his using it or acting upon it in some way that this was in effect at that time, on the date of its issuance date.

Mr. Riley: If Your Honor please, this is exactly what we've been confronted with the whole time. Counsel brings in a bunch of documents which he says that he received from the defendant airline which were documents in response to a subpoena. I asked for documents, and if the Court please I'll refer to that again, "All applicable components"——

The Court: Mr. Riley, the Court's ruling will stand and you may proceed with something else. I do not wish to hear further argument.

Mr. Riley: Well, he has identified these [272] as documents which have been given to him by the defendant airline which were in effect on January 19, 1952.

The Court: I did not so understand his statement, but I will ask you to produce evidence to that effect. You may proceed. That is, if you wish the Court to finally rule upon it at this time.

(Testimony of Edward K. Pitcher.)

Mr. Riley: Well, I'll withdraw my request that this be admitted as an exhibit at the present time.

Q. (By Mr. Riley): Mr. Pitcher, I'll ask you to state where the life rafts according to that drawing are shown to be located?

Mr. Koch: I object to the form of the question. There is no testimony——

The Court: That objection is sustained. That is not in evidence, and your question in effect asks him for the contents of an unadmitted document.

Mr. Riley: Your Honor, I will reoffer Plaintiffs' Exhibit 14 in evidence.

The Court: The objection to it is sustained for the present with leave to later further identify it.

Mr. Riley: Will the bailiff deliver Plaintiffs' Exhibit 15 to the witness?

The Court: That will be done. [273]

(The exhibit was handed to the witness.)

The Court: You see, we surely are spending a great percentage of trial time in fooling around with these documents.

Mr. Riley: Well, I agree.

The Court: Counsel should have investigated a lot of law and brought this thing into clear focus long before this time. It is what happens in two-thirds of the trials we have in this court. You should have taken depositions and established these things.

Mr. Riley: Oh, I shouldn't take the Court's time to observe that we absolutely and have been

(Testimony of Edward K. Pitcher.)

entirely without funds. We can't go flying back to St. Paul, Minnesota, taking expensive depositions. We think that we have a right when we demand documents of an airline which is doing business in this state and subpoena them lawfully, we think we have a right that they produce them identified as the documents which were in effect on January 19, 1952. This the defendant has not done, and I think it's unfair and it's prejudicial.

The Court: You should read the subpoena that asked that they so act and then you should produce evidence of the action. You have not called to the [274] Court's attention the subpoena. I have not before me the terms of any subpoena. You have not called to the Court's attention the specific action pursuant to that subpoena.

Mr. Riley: This matter was one of the first things that was before the Court at the commencement of this trial when the defendant——

The Court: Where is the subpoena?

Mr. Riley: ——moved to—they are in the record.

The Court: Get the record.

Mr. Riley: Will the clerk give me the file in the Gorter case?

(The file was handed to Mr. Riley.)

The Court: Now have you a copy of the subpoena?

Mr. Riley: I do, Your Honor.

The Court: Get your copy and mark the places that you wish to call to the Court's attention, on

(Testimony of Edward K. Pitcher.)

your copy, so that when the Court gets this one I can verify what you say. You can make any sort of a reminder mark on your copy.

Mr. Riley: Well, I'll refer to——

The Court: Now, you see, that illustrates another thing. Sometimes Counsel in a case assume [275] that the Court ought to know what they know without proof and that they ought to be able to state by way of argument facts which they know quite well and are quite justified in knowing upon the information they have, but that is not sufficient. Counsel owes it to the Court and it is necessary that Counsel adduce proof before the Court to substantiate the facts known by Counsel from his long months of study and acquaintance-ship with the details of the case.

(The file was handed to the Court.)

Mr. Riley: I refer to Paragraph 6 of the subpoena before Your Honor.

The Court: I have before me the subpoena duces tecum which was—I do not know whether it was filed here or not. I do not see any filing mark on it. Was it attached to something else, Mr. Clerk? I do not see any filing mark on it. Take it down to Counsel.

(The file was handed to Mr. Riley.)

The Court: That copy you have there may have been attached to something else which was filed. It may be attached to the Marshal's return.

The Clerk: They are all 98, Your Honor. It was filed on——

(Testimony of Edward K. Pitcher.)

The Court: What is it? You make the statement [276] so Counsel can know as much about the Court's knowledge as the Court does.

Mr. Riley: It's attached to Document No. 98, which is the return of service by——

The Court: By the Marshal, is that right?

Mr. Riley: No, sir, Your Honor, it's a return of service by Robert W. Windsor.

The Court: Was he appointed by the Court to serve?

Mr. Riley: Not to my knowledge, if Your Honor please.

The Court: Is he under the rules permitted to serve?

Mr. Riley: Yes, he is, Your Honor.

The Court: All right.

Mr. Riley: I can read the affidavit of service if you wish.

The Court: No, that is not necessary, but there is a good example of having service made by somebody other than the Marshal. The Marshal's acts are official. If the Marshal made a return—but he does have an affidavit of service, does he?

Mr. Riley: Yes, he does, Your Honor.

The Court: Very well. Let me see it. The purpose of this is so the Court can know what date it [277] was.

Mr. Riley: The document was filed on the 21st day of March.

The Court: Let me see it. Do you have a copy of the subpoena?

(Testimony of Edward K. Pitcher.)

Mr. Koch: I don't know which subpoena it is, Your Honor. There are a number of them.

(The file was handed to the Court.)

The Court: The subpoena has a first paragraph in it and fourth line commanding Northwest Airlines to appear in this court at 704 United States Court House on the 22nd day of March, 1957. It was dated the 18th day of March, 1957. A duces tecum signed by the Clerk of this court at the request of Mr. Riley. That is the date of it, apparently. Another one was dated the same date, addressed to Northwest Airlines. There are two subpoenas duces tecum attached.

Mr. Riley: Both of those documents, and particularly the one to Northwest Airlines and Mr. Curry, in Paragraph 6 I direct the Court's attention to the line——

The Court: The paragraph bearing Arabic No. 6 on the second sheet thereof at Line 13?

Mr. Riley: Yes, Your Honor. [278]

The Court: What does that say?

Mr. Riley: "All applicable components of Northwest Airlines manual and Northwest Airlines DC-4 operating manual and Northwest Airlines maintenance manual as maintained by defendant airline on or about January 19, 1952."

The Court: Very well. Now what else do you have to say about anything coming to your——

Mr. Riley: I understood and I intended and I did demand at the time the documents were submitted to me the remaining portions of those

(Testimony of Edward K. Pitcher.)

manuals in the possession of Counsel. I understood that that's what he had, that's what he had asked the company for and that's what he brought into court this morning and that what he was delivering to me when they were identified by the clerk for submission to this witness.

The Court: What is your response as to whether that was what you were acting on in respect to?

Mr. Koch: Your Honor, the Court—I wonder if the Court would indulge me just a moment for the background of this.

The Court: No, I do not want to hear that.

Mr. Koch: On this particular point, we gave Counsel whatever we had. We came into court and laid [279] it all on the table——

The Court: Did you do it in response to Paragraph 6?

Mr. Koch: Well, we've said that we didn't feel it was our duty to determine what the applicable components were and the Court ruled that that wasn't our responsibility, that we weren't—that it put an unreasonable burden on defendant to decide what plaintiff considered the applicable components.

All there was that we had we made available to Mr. Riley, but that there might be other applicable components that we had we couldn't take the responsibility for. We couldn't select the ones that were unfavorable and return them so we wouldn't have them, every one that we thought was relevant we have had brought here. But the others

(Testimony of Edward K. Pitcher.)

we are in the process of obtaining, and as soon as we get them we make them available to Counsel.

The Court: I will hear from opposing Counsel.

Mr. Riley: Now, did I understand you, Mr. Koch, to state that these are parts of the manual in effect on January 19, 1952, or not, in response to the subpoena?

Mr. Koch: No, we——

Mr. Riley: Then why did you bring them into [280] court if they're not?

Mr. Koch: The bulletin is a part of the supplementary operating manual and I already had told the Court in response to the question at the opening of the session that we weren't splitting hairs, that if it became a part of the manual applicable by way of supplement, then we considered that part of the manual and we provided the supplemental bulletin, but this loading data is not part of the manual so far as I know. It appears to be something in the nature of an inspection or loading form. I think that otherwise, if it is a part of the manual, will clarify that, but as far as I know it is not; and I may be incorrect, I just don't know this much about it.

I do know that every manual provision has a code reference, and it says—it has a paragraph like R. C. W. Paragraph 22.04.06. This has no such information, and therefore I conclude that it is not part of the Northwest operating manual and is unrelated to Bulletin 144.

The Court: What is the comment of Counsel,

(Testimony of Edward K. Pitcher.)

at Plaintiffs' Exhibit 15 tell what it is, Mr. Pitcher? And please answer that yes or no.

A. 15?

Q. Yes. A. It's a service bulletin.

Q. What is a service bulletin?

Mr. Koch: If you know.

A. Oh, it would be describing some changes, or—do you want to see this, Your Honor?

The Court: "Service", what do you mean by "service"? A bulletin for what, a bulletin that touches what kind of work or thing?

A. Something unusual or something not covered in the manuals, or something like that, I believe. I—

The Court: Try to understand that you are to give the same kind of answer to that that you would give to a child that never heard anything about this case or any work that any witness employed by the defendant airline ever did as to any subject. Consider [284] that everybody else is wholly ignorant. Now then, with that in mind will you read this question.

(The reporter read Mr. Riley's last question as follows: "What is a service bulletin?")

A. Well, I don't know whether it would be a true definition or not, but it would be a bulletin that would be covering some new type aircraft or some changes that would be put out before a manual change, or—

Q. (By Mr. Riley): Do these bulletins become a part of the manual or the maintenance manual?

(Testimony of Edward K. Pitcher.)

A. That I don't know.

Q. Are they regarded as part of the manual?

Mr. Koch: I object. He just said he didn't know.

The Court: Overruled.

A. That I don't know. That's not—I have nothing to do with that.

Q. (By Mr. Riley): You stated you're familiar with the maintenance manuals. When you consult a maintenance manual on a question do you also consult the service bulletins?

Mr. Koch: I'll object to that, Your Honor.

The Court: Overruled.

Mr. Koch: It hasn't been established that [285] he does consult the maintenance manuals.

The Court: Overruled.

A. If there's a service bulletin on it we look at it, yes.

Q. (By Mr. Riley): All right. What is the effective date of that service bulletin before you, if you can tell from looking at it?

The Court: Or from his own knowledge.

Q. (By Mr. Riley): Or from your own knowledge.

Mr. Riley: Thank you, Your Honor.

A. The only thing I could read here would be——

The Court: Do not read it out loud. Consider your own knowledge, independent of that. Consider that, and then thereafter give your answer to the question.

(Testimony of Edward K. Pitcher.)

A. What was the question again, please?

The Court: Read it.

(The reporter read the question as follows:

“What is the effective date of that service bulletin before you, if you can tell from looking at it, or from your own knowledge?”)

A. I don't know.

Q. (By Mr. Riley): Does the document have on the top of it or does it not notations indicating the effective [286] date and the date of the document which it supercedes?

A. It has a date and it has——

The Court: Do not state what the date was.

A. It has a date that it supercedes.

Q. (By Mr. Riley): Now you can read it, and can you, having read it, tell us what the effective date of it was?

A. It's dated August 29, 1951, and it supercedes the January 5, 1951.

Q. Does the document before you deal with specific ships in the Northwest Airlines fleet on January 19, 1952, or with all ships in the Northwest Airlines fleet on that date?

Mr. Koch: I object to the question.

The Court: If you know.

Q. (By Mr. Riley): If you know.

Mr. Koch: He hasn't testified that it was in effect at all in January of 1952.

The Court: The objection is overruled. Read the question, with the Court's imposed condition.

(The reporter read the question as follows:

(Testimony of Edward K. Pitcher.)

“Does the document before you deal with specific ships in the Northwest Airlines fleet on January 19, 1952, or [287] with all ships in the Northwest Airlines fleet on that date, if you know?”)

A. This deals with ships that we were operating from other airlines.

Q. (By Mr. Riley): Can you tell or do you know from your own knowledge whether or not that document deals with Ship 601, which was the ship which crashed on January 19, 1952, at Sandspit?

A. Well, that ship is listed here.

The Court: Is your answer yes or no, Mr. Pitcher? A. Yes.

Q. (By Mr. Riley): And does it or does it not?

The Court: He has answered yes.

A. Yes.

Mr. Riley: Thank you, your Honor. I now offer Plaintiffs' Exhibit 15 and ask the Court to examine same. I believe that its contents and——

The Court: I want you to see if there is any other witness here that can give any information on this.

Mr. Riley: I believe there is. Mr. Matthews.

The Court: The Court will take a recess at this time. Do you wish to excuse this witness from the [288] stand or do you wish to cross examine any more?

Mr. Koch: I just have one question I would like to ask.

(Testimony of Edward K. Pitcher.)

The Court: Ask that and then we will have the recess.

Mr. Koch: Mr. Bailiff, may I see Plaintiffs' Exhibit 14.

(The exhibit was handed to Mr. Koch.)

Recross Examination

Q. (By Mr. Koch): In the center panel, Mr. Pitcher, where you see the two cabin configurations outlined on Exhibit P-14, do you see those two outlines? A. Yes.

Q. The upper configuration applies to what ships? A. 403.

Q. Will you read the language just above and down at the bottom of the page surrounding those two configurations?

A. I don't get just where you mean, sir.

Q. Read the bottom line.

A. The bottom line?

Q. Yes, just below the——

The Court: Read it silently.

(Brief pause.) [289]

Q. (By Mr. Koch): Now, what ship does the bottom configuration apply to? A. Ship 673.

The Court: Court will be at recess ten minutes.

(Short recess.)

The Court: The Witness will please resume the stand for further interrogation and you may resume it, Mr. Koch.

Q. (By Mr. Koch): Mr. Pitcher, referring again to Plaintiffs' Exhibit 14 and to the two airplane

(Testimony of Edward K. Pitcher.)

configurations which appear on that exhibit, will you tell me to what airplane the bottom configuration, the one at the bottom of the page, refers to?

A. 673.

Q. That's Airplane No. 673?

The Court: 60, or——

A. 673.

Q. (By Mr. Koch): And what is the passenger capacity of Ship 673?

Mr. Riley: I haven't any idea what the relevancy of Ship 673 has in this action.

The Court: And how is it within the scope of the other examination? What is this, recross examination? It is, is it not? [290]

Mr. Koch: Yes, your Honor. The reason is that the witness was asked to testify with respect to this very configuration by Mr. Riley, and I want to clarify the error that was made, is all.

The Court: The configuration as to this plane, he was centering more upon 601, wasn't he?

Mr. Koch: Exactly, but Mr. Riley referred him to the wrong configuration and had him testify——

The Court: Did he refer him to this configuration relating to this airplane?

Mr. Koch: Yes. He asked him to read the bottom line, which does not refer to 601, it refers to 673.

The Court: You may inquire.

Q. (By Mr. Koch): What is the passenger seating capacity of Ship 673?

The Court: Except in making that statement

(Testimony of Edward K. Pitcher.)

Mr. Koch: I have no further questions.

The Court: Is it essential to ask anything else or should you not go on to another witness now?

Mr. Riley: I have two questions, your Honor, which I think are very critical.

The Court: Do you mean accurately two questions?

Mr. Riley: Well, two topics which are critical to the Plaintiffs' case.

The Court: You know the other side has the last word in this thing if there is anything that is important, Mr. Riley. Having that in mind, you may—is it something that has been developed [294] in this recross examination?

Mr. Riley: Yes, your Honor. He stated that these two documents show the configuration of Ship 601. I'm not clear whether I developed from him that Exhibit 14 shows the location of the life rafts and, if so, where. I want to show that they show that they are aft of the main cabin door instead of forward, and that he knew that was the case when they loaded these pamphlets.

The Court: You may inquire.

Redirect Examination

Q. (By Mr. Riley): Mr. Pitcher, you prepared the sketch attached to Exhibit A-15, did you not?

A. Yes.

Q. And you state that it is the same and it is in conformity with the diagrams contained in Plaintiffs' Exhibit 14?

(Testimony of Edward K. Pitcher.)

A. Which one is 14, this one?

Q. The loading data sheet.

A. It would be the same as this upper diagram.

Q. Is it correct that you prepared the sketch in Exhibit A-15 shortly after the crash of Flight 324 in January of 1952? [295] A. Yes, sir.

Q. And did you know that that was the configuration at the time the aircraft was loaded with ditching pamphlets when Flight 324 departed for the Orient?

A. The same as this, yes, sir.

Q. And did you know that the ditching pamphlets you were placing aboard illustrated a different cabin configuration than actually existed in Ship 601, which was Flight 324 on January 19, 1952?

A. I don't remember which ditching folders we were using at the time on that ship.

Q. But you have testified——

The Court: "Have you not."

Q. (By Mr. Riley): ——have you not, that all of the DC-4's in the Northwest Airlines operating fleet which were Northwest Airlines ships in each case had the stowage of the life rafts forward of the main door, isn't that correct?

A. Not all of them were forward.

Q. Well, what exceptions? Do you mean by the exceptions that those——

The Court: Wait just a moment. Withdraw the first question, if you wish to proceed.

(Testimony of Edward K. Pitcher.)

Mr. Riley: I will withdraw the first question, if the Court please. [296]

Q. (By Mr. Riley): Now, Mr. Pitcher, which ships did not have life rafts stowed forward of the main door?

A. I don't know. There was too many ships. I don't remember all of them.

Mr. Riley: Well, I have no further questions, if your Honor please.

The Court: Anything further?

Mr. Koch: No questions, your Honor.

The Court: Mr. Pitcher is excused from the stand.

(Witness excused.)

Mr. Riley: I'll call Mr. Opsahl.

May it please the Court, we anticipate calling this afternoon, and we ask to commence Mr. Opsahl's testimony in anticipation of interrupting his testimony in order that Mrs. J. R. Bloth, who is a resident of Alamogordo, New Mexico, who flew here last night to testify, she is the guardian of the daughter of the decedent J. M. Waldrep, and she——

The Court: Do you ask leave to reserve that right?

Mr. Riley: Yes, I do, your Honor.

The Court: Is there any objection?

Mr. Koch: No objection. [297]

The Court: That will be granted.